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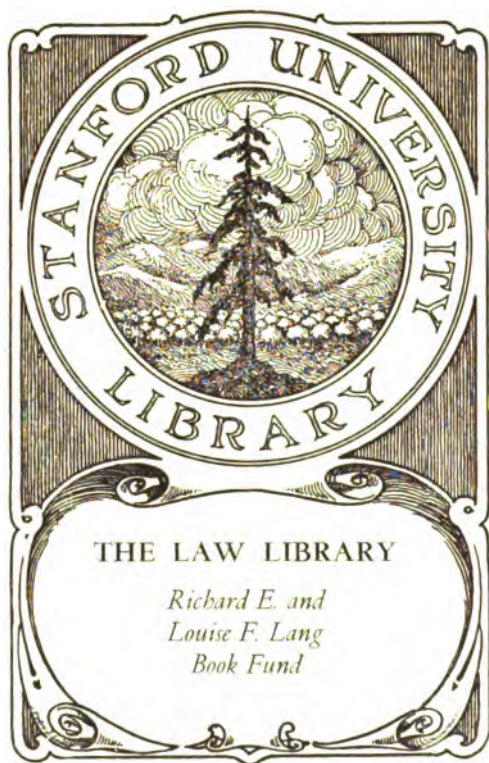
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THE SKINNERS' COMPANY  
VERSUS  
THE HONOURABLE THE IRISH SOCIETY  
AND OTHERS.

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PROCEEDINGS  
UPON THE  
MOTION FOR A RECEIVER,

AT THE SUIT OF  
THE SKINNERS' COMPANY,

COMMENCING  
NOVEMBER 23, 1835,

IN  
**His Majesty's High Court of Chancery.**

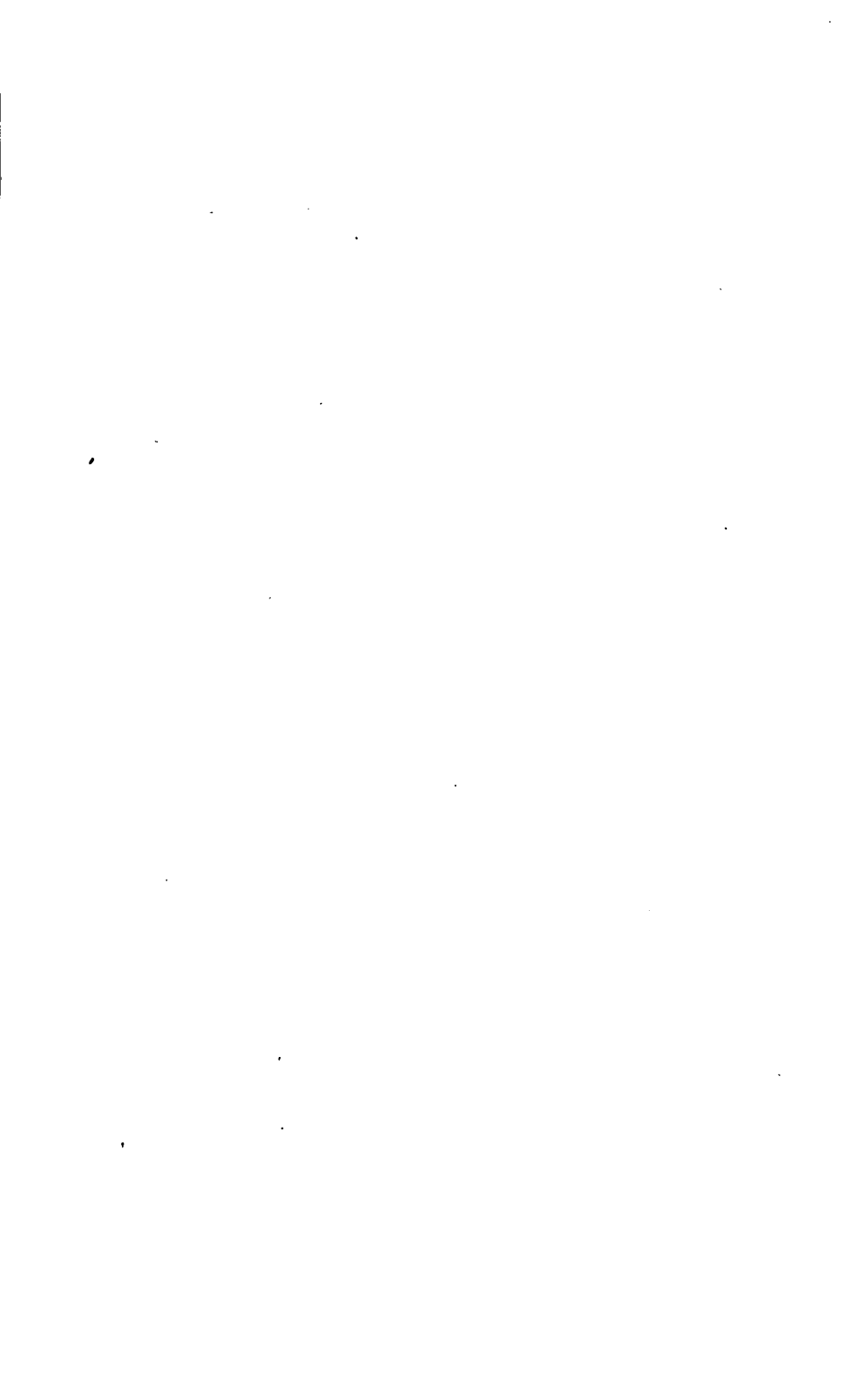
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LONDON:  
PRINTED BY RICHARD CLAY,  
BREAD-STREET-HILL.

1836.



[In the High Court of Chancery.

PROCEEDINGS  
ON THE MOTION FOR A RECEIVER,

BEFORE THE

RIGHT HON. LORD COMMISSIONER PEPYS,

AND THE

RIGHT HON. LORD COMMISSIONER BOSANQUET,

In the Court of Chancery;

Copied from the Transcript of the Short-hand Writer's Notes.

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*Monday, 23d November 1835.*

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SIR WILLIAM FOLLETT.—My Lords—

Sir CHARLES WETHERELL.—Before my learned friend goes on, I think it necessary to state to your lordships that I appear in this case for the City of London—for what purposes I know not; they have not thought fit to serve the City of London with the motion, although, when it comes to be fully discussed and opened, you will perceive that the City of London are one of the most essential parties in this measure. Your lordships are perfectly well aware, that although it may serve the purposes of persons on one side of the question not to give a notice of motion to another party, it is the right of that party hereafter to appeal against any order which is made *ex parte*, and in the absence of a person who ought to be served with notice.

Sir W. FOLLETT.—We have no objection to the City of London appearing now.

Sir C. WETHERELL.—Then that puts an end to the question.

Sir W. FOLLETT.—They appear at their own risk ; we do not choose to serve them with a notice.

Sir C. WETHERELL.—That is again another finesse of my learned friend, whom we have great satisfaction in seeing in this Court. There are matters of finesse in the Courts which are usually graced by the presence and the learning, the talent and the eloquence, of my honorable and learned friend : in this Court, also, finesses are sometimes practised—in this Court, graced by the occasional presence of my learned friend, and less graced because his presence is not constant here, but occasional. We have here, also, our finesses of practice ; and one is, that if persons think they will be exposed to double costs in a motion which they cannot succeed in, their habit sometimes is, not to serve a party who ought to be served : and when my learned friend says, Well, we have no objection to your appearing, but we will not pay you your costs, that is a finesse which, by implication, admits that we ought to serve you with notice ; but when our motion is dismissed it is extremely convenient not to have served you, the City of London, who ought to have been served, and who, if the motion is dismissed, will have their costs paid. The finesse is, to argue the motion in the absence of the party who ought to be served with notice, though if that party chooses to appear he may appear at his own cost. Now it may well be supposed, that with respect to costs, the City of London are not in that condition that the reception or payment of costs is a matter of such importance to them ; nevertheless, as a general rule, it is fraught with impropriety in a case involving considerations of high importance, that a motion respecting the authority, and the jurisdiction, and the rights of the City in the government and management, and control and visitation, of an important public body, that a motion of this sort should be discussed in their absence, and that by and by an equally important—I was going to say, almost a more important—motion should be made by those by whom the motion is made ; that a motion of this sort should be discussed, and that it should be said—You may appear and defend yourselves, if you please, but you must do

so at the peril of costs,—I must take the liberty to say that that is a perfect finesse in the management of this motion. I can only say, that on the part of the City of London I believe your lordships will see, in the progress of this case, that the City of London are a necessary party in this motion; and I contend, therefore, that the City of London are to be considered as served with this notice of motion, and that by and by, if it is dismissed with costs, the City of London will have their costs.

Lord Commissioner PEPYS.—If it is dismissed with costs because the City of London ought not to be parties to it, you will not be entitled to costs; but if it is dismissed with costs upon the merits, of course you will be entitled to costs if you are necessary parties.

Sir W. FOLLETT.—What I say is, that we have no objection to the City of London appearing, but we do not wish to be considered as serving them with notice, because, I say, they ought not to appear, and they appear at their own peril.

Sir C. WETHERELL.—It is not for me to assume confidence in anticipating what the judgment of your lordships may be, but I may presume with confidence to anticipate what your opinion will by and by be. You will by and by say that the City of London must be served with this motion; and that you cannot stir without having the City of London here.

Lord Commissioner PEPYS.—Under those circumstances, in the way in which it stands, you will be considered as having been brought before the Court.

Sir W. FOLLETT.—I do not know whether we are to understand that; my learned friend does appear.

Sir C. WETHERELL.—I have already stated that before this motion is disposed of I shall claim to be heard.

Mr. WIGRAM.—And you appear now.

Sir C. WETHERELL.—No, I do not appear.

Mr. WIGRAM.—That is the very point.

Sir C. WETHERELL.—In short, by and by, when this motion has been opened for five minutes, you must come to the point, and that point is, whether you are to make an experimental motion at the hazard of putting the City of London into the situation of opposing it at their expense, and not at yours.

Now that is the plain upshot of this ingenious mixture of legal and equitable finesse.

Sir W. FOLLETT.—I understand now that my learned friend Sir Charles Wetherell does not appear for the City of London, and I did not suppose that he would; for I think your lordships will see that the City of London have no interest in this case, and that they ought not to be made parties to it.

Sir C. WETHERELL.—If you mean to say that I do not mean to appear in the motion, you have misinterpreted what I have said. Before your lordships make an order in this case I shall claim to be heard for the City of London.

Sir W. FOLLETT.—Whether my learned friend means to appear or not, probably he should state at this stage of the case. He says it is hard to put the City of London to hazard. If he is right in what he has said, that the City of London ought to be parties, they are under no hazard.

Sir C. WETHERELL.—We are here defendants in the suit.

Lord Commissioner PEPPYS.—Our rule is this: of course the Court can form no opinion till the case is heard, whether a party ought to be served; but if in the course of the discussion it appears that another party ought to be brought before the Court, of course the discussion is delayed till that party is brought in.

Sir W. FOLLETT.—Then I understand that my learned friend does not appear now.

Sir C. WETHERELL.—When I have heard what you state I will tell you whether I appear.

Mr. KNIGHT.—Probably it would be convenient to your lordships to ask my learned friend what parties he has served.

Sir W. FOLLETT.—My learned friend Mr. Knight appears for the Irish Society.

Mr. KNIGHT.—I appear for the Irish Society; but I merely suggest, more as *amicus curiæ* than in any other capacity, that it might be convenient to know what parties have been served, but state no objection whatever.

Mr. WIGRAM.—I understood your lordship to put the point thus:—if in the progress of the argument you find that the City of London have such an interest as that this motion cannot be

disposed of without their being made parties, then of course the motion will stand over to make them parties; then if we succeed in the motion, the costs will be decided according to that result; and if we fail in the motion, the costs will be decided according to that result. Before we open the case now we must know whether that party does mean to say that he appears at his own peril; we cannot open the motion without knowing whether the interest which they say they have is to be taken into our account in opening, or not.

Lord Commissioner PEPYS.—I understand that Sir C. Wetherell elects not to be a party to this motion.

Sir C. WETHERELL.—The time to elect has not yet come.

Sir W. FOLLETT.—At present, I understand the only parties before the Court are the Skinners' Company, and the Corporation of the Irish Society. Now this is a motion on the part of the Skinners' Company, to call upon the Irish Society to pay into the Bank, with the privity of the Accountant-General of this Court, to be placed to the credit of this cause, the sum of 4719*l.* 4*s.* 6*d.*, appearing, by the answers of the said defendants, and of the defendants, John Thomas Thorpe and Henry Schultes, to the original bill, and the printed accounts therein referred to, as the balance in the hands of the defendants, the Irish Society; and that the said money, when so paid in, may be laid out in the purchase of 3*l.* per cent. Consolidated Bank Annuities, with the privity of the said Accountant-General, in trust in this cause; and that a Receiver or Receivers may be appointed of the rents and profits of the estates and premises in the pleadings in this cause mentioned, in the possession of the defendants, the Irish Society, with all usual directions; and that the said defendants, the Irish Society, may be restrained, by the injunction of this Court, from further collecting and getting in the rents and profits of the said estates, or any part thereof. My Lords, that is the motion, in support of which I have the honour to appear before your lordships; and the motion is made in a cause in which the Skinners' Company are the plaintiffs, and the Irish Society are the defendants, with the other Companies of the City of



London, who have a joint interest in this proceeding with the Skinners' Company. The object of the suit is—

Sir C. WETHERELL.—The City of London is also a party. There is also John Thomas Thorpe, Alderman, a Governor of the Society, lately dead ; and I do not know whether that gap has been filled up ; probably a dead Governor must be replaced by a living Governor.

Sir W. FOLLETT.—It would seem as if my learned friend was appearing in the cause, though he said that he had disappeared just now. The City of London is a defendant in this cause, and the City of London represents the interest which was originally in two of the Companies of London, and now vested in the Corporation of the City of London ; therefore it was necessary in that character that they should be made defendants to the suit.

The object of the bill is to have a declaration that the Companies of the City of London are the parties beneficially interested in the rents and profits of the estates now in the hands of the Irish Society ; and to have a declaration that that Society are Trustees for those Companies. The bill also goes on to pray an account, and for the appointment of a Receiver ; and the main question in the cause is, whether the Companies in London are not entitled to have a declaration, that the Irish Society are Trustees for them in the management of this property.

Now I will state to your lordships, in the outset, that the property in question consists of certain town lands in the neighbourhood of the city of Londonderry, and the town of Coleraine, in Ireland, and the profits of certain ferries and fisheries in the county of Londonderry. It was property which remained in the hands of the Irish Society at the time of the original grant of King James the First, when the rest of the property of Londonderry, held by the City Companies, was divided equally among them. This property was considered not to be capable of division, and remained in the hands of the Irish Society. Your lordships are, no doubt, aware that the City Companies hold considerable property in the county of Londonderry ; that each of the twelve Companies has

estates in that county. They all claim those estates under the same grant, and the same title, from James the First; and the property in question was granted, at the same time, by King James the First; but it not being capable of being divided among the Companies, it has remained in the hands of the Society.

Now the Irish Society, who hold this property in their hands, continued, till a very late period, to hold this property, according to their acts and declarations, as trustees for the Companies in London, and the profits were divided amongst the Companies yearly; but of late years this property has not been managed consistently with their duties as trustees; they have set up claims which are inconsistent with that character. They have claimed to have a control over the management and disposal of this property, which is wholly inconsistent with the character in which they hold it; and they have moreover been guilty of expenditure, wasteful and extravagant, in a degree which cannot be justified in any character which they may assume to hold it. Those claims which have been set up by the Irish Society, (and there cannot be any dispute as to the fact,) have rendered it imperative upon the City Companies to take these proceedings against them, in consequence of the extraordinary claims, which have, within the last year or two, been set up by this Society; because before we filed this bill, the Irish Society not only stated that they were not trustees of this indivisible property which was in their hands, but they actually claimed to have control, and a paramount interest over the City Companies, in the estates which have been held by the City Companies, distinct and separate for their own use, from the time of King James the First to the present moment. I do not mean to say, that in this suit they have set up any such claim; of course their counsel would tell them at once that any such claim was wild and extravagant, and they have not done it here; but I think your lordships will see, upon the statement of this case; and the evidence we shall lay before your lordships, that there is no more pretence for one of those claims than for the other; that not only the property which the City Companies hold in their own hands, but that also the property which is held by the

Irish Society, is their property, subject to no control of any sort or kind; but that the Irish Society are simply trustees for the benefit of the Companies.

My Lords, that is the question we shall set before your lordships. I undertake to satisfy the Court of that, by incontrovertible evidence, by the whole history of these proceedings, and by proceedings and documents of every sort on the part of the Irish Society; and I apprehend that if we satisfy the Court of that,—that they are trustees for the Companies,—that they have been wasting and expending improperly the funds of the Company;—and above all, when your lordships recollect that the Irish Society has no property whatever,—that there is no means whatever of getting from the Irish Society any money which they might misapply, inasmuch as they have no property whatever of any sort, kind, or description whatever, except the property which they hold in trust for those Companies,—I apprehend that it will follow as a necessary consequence, that we shall be entitled to have the funds in their hands paid into this Court, and a Receiver appointed to receive the rents and profits of the estates. That is the case which we mean to present before your lordships.

The history of the property is this: Your lordships are perfectly aware, as a matter of history, of the mode in which this property got into the hands of the City Companies: your lordships remember the rebellion by the Roman Catholic chieftains, in the north of Ireland, during the latter part of the reign of Elizabeth and the beginning of the reign of King James the First. Those rebellions were suppressed, and the effect of it was, that at the beginning of the reign of King James the First, the whole of the lands of six of the northern counties of Ireland were vested in the hands of the Crown, by the attainders and forfeitures consequent upon those rebellions. King James the First, instead of granting those lands out again to the rebellious chieftains, or to their families, or to any of the favourites of the Court, took that opportunity of carrying into effect the project he had entertained of colonizing the north of Ireland with the Protestants from England and Scotland:—a project which, your lordships are aware, did

ultimately prove successful, and which had the effect of converting that part of Ireland from the most barbarous and turbulent into the most quiet and civilized; and, I think I may say, the most prosperous. It commenced in the early part of the reign of King James the First, by certain printed proposals, which were circulated under the authority of the Privy Council, and under the advice of the Earl of Salisbury. Those printed proposals were addressed to the public generally—to the public of England and of Scotland, and to the Protestants of Ireland; and the object was to hold out to them inducements to take grants of the land in the northern counties of Ireland: and your lordships are aware, that the greater part of the land in the northern counties is held by individuals who have held under these grants of the Crown. I am not speaking now of the City grants, which are confined to one county. It may become necessary to call your attention now to the form of these proposals, because it is upon the history of those transactions, upon what took place between the King and the City of London, respecting the Companies of London—

Sir C. WETHERELL.—Now is the time that I must call your lordships' attention, as soon as the name of the City of London is brought in.

Sir W. FOLLETT.—The mere history of these transactions which took place between the Crown, and the City of London, who represented the Companies of London, and the mode in which the Irish Society was formed, and the purposes of its formation, would alone satisfy your lordships, if we were without any other evidence, that the Irish Society held this property simply as trustees for the Companies. I do not mean to say that we are without other evidence; but it is to the history of the origin of the grant of this land that I pray your lordships' most particular attention. The printed proposals were, in effect, these:—The object was to induce persons to settle in Ireland. They were to receive grants of land at small fee-farm rents. Upon those lands they were within a certain time limited, by the proposals, to build, according to the extent of the land, houses or castles, or whatever might be sufficient to resist the encroachments of the natives in that part of Ireland,

Having so done, the parties were to hold their lands subject to those quit-rents. And they have so held them, and are as such their property, and, I believe, never were supposed to be clothed with any trust for any purpose whatever. They were given to them expressly subject to the rent, and subject to the conditions in the printed proposals, which were to be performed within a certain specified time.

Now the printed proposals were, in effect, the following ; and I should state that I am now reading from a book to which I shall have occasion to refer more than once—a book printed by the authority of the Irish Society ; and as far as the documents go, it is borne out by the documents. The title of the book is, “ Concise View of the Origin and Proceedings of the Irish Society, compiled principally from their Records, in 1822.” It is admitted by them in their answer. These written proposals are thus intituled : “ A Collection of such Orders and Conditions as are to be observed by the Undertakers upon the Distribution and Plantation of the escheated Lands in Ulster.” Then it goes on : “ Whereas the greatest part of six counties in the province of Ulster, within the realm of Ireland, named Armagh, Tyrone, Coleraine, Donegal, Fermanagh, and Cavan, being escheated and come to the Crown, hath lately been surveyed, and the survey thereof transmitted and presented unto his Majesty, upon view whereof his Majesty, of his princely bounty, not respecting his own profit, but the public peace and welfare of that kingdom by the civil plantation of those unreformed and waste countries, is graciously pleased to distribute the said lands to such of his subjects, as well of Great Britain as of Ireland, as being of merit and ability, shall seek the same with a mind not only to benefit themselves, but to do service to the Crown and commonwealth ; and for as much as many persons, being ignorant of the conditions whereupon his Majesty is pleased to grant the said lands.”

Then he sets out the conditions : he first of all describes the proportions : they are to be divided into three ; the smallest is to consist of 1,000 English acres at the least ; the next, of 1,500 English acres ; and the next of 2,000 English

acres. Then the persons, the undertakers of the several proportions, shall be of three sorts, "English and Scotch, as well servitors as others, who are to plant their portions with English or inland Scottish inhabitants. There was one condition, that they were to have no Irish upon their estates; but either English, or English and Scotch. Then, secondly, "Servitors in the kingdom of Ireland, who may take mere Irish, English, or inland Scottish tenants, at their choice." Then, thirdly, "Natives of Ireland, who are to be made freeholders." Then, after having stated this, came the articles applying to each of the three descriptions. There are, first, the articles concerning the English and Scotch undertakers, who are to plant their portions with English and Scotch tenants. "First, his Majesty is pleased to grant estates in fee-farm to them and their heirs. Second, they shall yearly yield unto his Majesty, for every proportion of 1,000 acres, 5*l.* 6*s.* 8*d.* English, and so rateably for the greater proportions, which is after the rate of 6*s.* 8*d.* for every 60 English acres. But none of the said undertakers shall pay anyrent until the expiration of the first two years." Then is stated the mode in which they are to hold them, which I apprehend not to be important.

Then comes this,—a condition imposed upon them,—Every undertaker of the greatest proportion, which was 2,000 acres, shall, within two years after the date of the letters patent—(it is important your lordships should observe that every condition imposed had a date affixed to it)—that they "shall, within two years after the date of his letters patent, build thereupon a castle, with a strong court or bawn about it; and every undertaker of the second or middle proportion, of 1,500 acres, shall, within the same time, build a stone or brick house thereupon, with a strong court or bawn about it; and every undertaker of the least proportion, of 1,000 acres, shall, within the same time, make thereupon a strong court, or bawn at least. And all the said undertakers shall draw their tenants to build houses for themselves and families, near the principal castle house or bawn, for their mutual defence and strength; and they shall have sufficient timber, by the assignment of such officers as the Lord Deputy and Council of Ireland shall

appoint." Then, sixth, — "Every of the said undertakers, English or Scottish, before the enſealing of his letters patent, ſhall take the oath of ſupremacy." One great object was, that Proteſtants ſhould be planted in that part of Ireland. That "the undertakers, their heirs and assigns, ſhall not alien or demise their portions, or any part thereof, to the mere Irish, or to ſuch perſons as will not take the oath which the ſaid undertakers are bound to take by the former article; and to that end a proviso ſhall be inserted in their letters patent." Then, — "Every undertaker ſhall, within two years after the date of his letters patent, plant or place a competent number of English or inland Scottish tenants upon his proportion, in ſuch manner as by the Commiſſioners to be appointed for the eſtabliſhment of this plantation ſhall be preſcribed. Every of the ſaid undertakers, for the ſpace of five years next after the date of his letters patent, ſhall be reſident in perſon himſelf upon his portion or place: ſome ſuch other perſon thereupon, as ſhall be allowed by the State of England or Ireland, who ſhall be likewise reſident there during the ſaid five years, unleſs by reaſon of ſickneſs or other important cauſe, he be licensed by the Lord Deputy and Council of Ireland to abſent himſelf for a time." Then, — "The ſaid undertakers ſhall not alien their portions during five years next after the date of their letters patent, but in this manner, *viſ.* one-third part in fee-farm, another third part for forty years or under; reſerving to themſelves the other third part, without alienation, during the ſaid five years: but after the ſaid five years they ſhall be at liberty to alien to all perſons, except the mere Irish and ſuch perſons as will not take the oath which the ſaid undertakers are to take as aforeſaid." Then they ſhall have power to erect manors, "they ſhall not demise any part of their lands at will only, but ſhall make certain eſtates for years, for life, in tail or in fee ſimple." Then there is a proviso, that they are not to have recourſe to the Irish exactions upon their tenants, which had been complained of. I believe theſe are all the articles which are important upon the English and Scotch.

Now, ſtopping there, nothing can be clearer than the inten-

tion of the king. In order to settle or plant a particular part which is supposed to be likely to be beneficial to the kingdom, he makes grants of the lands to certain persons, who held them upon fee-farm of the king, subject to the condition of re-putting them into a certain state: no one would contend that there is any trust in these persons which was to run on. Then came a proviso against cuttings, cosheries, and other Irish exactions. I do not know that I need go through those; they are the same in substance; they are to be effectual for five years. They are to take the oath of supremacy; they shall not alien to any person or persons who will not take the oath. That is the second class.

Now the third class are the Irish natives, who are to be admitted freeholders. They are to have their estates in fee farm;—they are to pay “a yearly rent of 10*l.* 13*s.* 4*d.* for every portion of 1,000 acres, and so rateably for the higher proportions, which is after the rate of 13*s.* 4*d.* for every sixty acres or thereabouts; and they shall pay no rent for the first year. Their tenures they shall hold as the other undertakers respectively, according to their portions, with the proviso of forfeiture of their estates if they enter into actual rebellion.” Then they are “to inhabit their lands, and build their castles, houses, and bawns, within two years, as the former undertakers;—they shall make certain estates for years, or for lives, to their under-tenants; and they shall take no Irish exactions. They shall use tillage and husbandry after the manner of the English pale.”—Then come certain general propositions in which the king undertakes to do certain things; amongst other things, to form corporations:—“That in every of the said counties there shall be a convenient number of market-towns and corporations erected for the habitation and settling of tradesmen and artificers; and that there shall be one free school at least appointed in every county for the education of youth in learning and religion; that there shall be a convenient number of parishes and parish churches, with sufficient incumbents in every county; and that the parishioners shall pay all their tithes in kind,” and so on.

Those were the original propositions of the king. They were



applied generally to any English or Scotch, and to particular descriptions of Irish; but it appeared that the plantation did not go on so rapidly as the king wished; and in order to get the plantation established about the town of Derry, the king made applications to the City of London of a very urgent nature,—applications of the same description which the kings were in the habit of making to the City of London:—they are contained in a Paper of “Motives,” as it was called, stating to the City of London certain reasons why they should undertake the colonization of that part of the forfeited estate about the towns of Derry and Coleraine. I had forgotten to state that, previously to that, commissioners were sent to Ireland (their names are here), who were to go through the whole of the forfeited estates, to make surveys of them, to report such parts as were fittest for the British settlers, and such as were fittest for the Irish; and to make reports upon the woods and the fisheries, and the most convenient parts for establishing parishes and churches, and every thing that was necessary for carrying into effect the plan of colonizing.

Then came the proposals to the City of London;—they are also in this book. In page 17 of this printed book it is stated, that the late ruined City of Derry, situated upon the river of Lough Foyle, navigable with good vessels upon the Derry, and one other place at or near the castle of Coleraine, situate upon the river of Bann, navigable with small vessels only by reason of the bar a little above Coleraine, seem to be the fittest for the City of London to plant. The situation is such, that with small charge and industry the aforesaid places, especially the Derry, may be made by land almost impregnable, “and so on.” These towns His Majesty may be pleased to grant unto, not only corporations, with such liberties and privileges for their good government, &c. as shall be convenient, but also the whole territory and country between them, which is about twenty miles in length, bounded by the sea on the north, the river Bann on the east, and the river of Derry, or Lough Foyle, on the west; out of which 1,000 acres more may be allotted to each of the towns for their commons, rent free; the rest to be planted with such undertakers as the City of London shall

think fit for their best profit, paying only for the same the easy rent of the undertakers. Then these printed particulars go, in the 18th and 19th pages, to point out to the City of London the great advantage of this plantation;—the situation, from its communicating readily with the interior of the kingdom of Ireland;—the abundance of the materials for building houses, ships, &c.;—its nearness to the sea, and the extent of the fisheries; and pointing out, therefore, the considerable advantages they will gain;—and His Majesty called to the attention of the Londoners, that the City of Dublin owed its prominence to the fact of its having been colonized by the City of Bristol;—that when the native inhabitants had been expelled, or put to the sword, the City of Bristol offered to colonize the City of Dublin;—and they did so; and that it is to that circumstance alone it owes its distinguished place among the towns of Ireland;—and calling upon them to imitate their example.

Upon the receipt of these proposals, the Mayor and Aldermen of the City of London issued precepts to the twelve chartered Companies of London. There appears to be an extra sort of jurisdiction which seems to have been assented to at that day: the Mayor and Court of Aldermen issued precepts to the Companies, requiring them to nominate four persons to meet and discuss this proposal of the king. The Companies nominated certain persons; but when they came to discuss, it turned out that those persons appear not to have had sufficient authority: other precepts are then sent to the Companies, and persons are appointed, with full authority to discuss these propositions. There is then a conference between a deputation of the City of London, consisting of the deputies of the Companies and of the Mayor of London, with the Privy Council; upon that, the circumstances under which this plantation is to take effect are discussed, and the City of London and the deputies are disposed to think favourably of this proposition; the effect of that is, that they send to Ireland certain persons to make survey of that part of Ireland which the king has offered to grant:—the parties go to Ireland under that authority, and make a survey of the land; and they come back and make this report, which is set out at full length in the answer.

They say, "that they have not for several days along debated and consulted of all things incident to so great a business; and for the better ordering of our proceeding, we propounded ourselves four general heads under; we handed every particular in his place. The four heads were these:—First, what sums of money should be expended;" — and expending the money, your lordships will see, is a very important part of the question, and where it came from.—"Secondly, what land and privileges should be demanded. Thirdly, what things should be performed. Fourthly, how all should be managed and ruled. For the first it was resolved that, though the undertaking somewhat exceeded what was first propounded, yet the sum of money to be expended should only be 15,000*l.* and that sum not to be exceeded; and for raising of this sum we held the fittest course to be by way of companies. That is the report then, that it is to be raised by Companies; and in Companies by the poll, according to the rate of corn set upon every Company. But some of the inferior Companies we thought fit to be spared; yet such as were known able men in those Companies to be set proportionally with men of like ability in other Companies, and for this levy and act to pass in this Court demands. For the second, touching the demand of lands, it was resolved, first, that the Derry, situated upon the river of Lough Foyle, and the town of Coleraine, situated upon the river of the Bann, should be the place where the two cities should be erected; about the Derry, 4,000 acres of ground; adjacent unto Coleraine, 3,000 acres of land to be laid; the rest of the territory and county of Coleraine, esteemed at 16,000 acres of temporal lands:" and so on. Then they go on to describe in what mode they would have the lands laid out, and then comes this: "The residue of the 15,000*l.* unexpended in these buildings shall be employed in bawns, trenchings, fortifications, and otherwise, as shall be found fittest."

"For the fourth"—Now I beg your lordships' particular attention to this, because this is the origin of the Irish Society, this is the first mention that is made of it. "For the fourth,—how all shall be managed and ruled: it is thought best that a Company be constituted here, in London, of persons

to be selected for that purpose ; and Corporations to be settled in the two cities of Derry and Coleraine. But all things concerning this plantation and undertaking to be managed and performed in Ireland, by advice and direction from the Company here in London." Now it is very important for your lordships to consider this. My learned friend appears here to-day on the behalf of the Irish Society, and contends, in some mode or other, I know not how, that the Irish Society are not acting on behalf of the Companies of London, but have some control in some way or another. Now, your lordships will observe, that the proposal for the formation of that Society does not come from the Crown ; but it is a report of the surveyors of the City Companies, who recommend that, for the benefit of the persons who are to advance the money, an association of that sort shall be founded ; that is the origin of that Society.

Now, after that proposition was made, and before this Society was constituted by the City of London out of persons selected by the twelve Companies of London ; before that was done, articles of agreement were entered into between the City of London and the Crown. Now upon those articles of agreement it is that this question must mainly turn ; it is under the articles of agreement that the City of London, or the Companies of London, hold this property. The City of London hitherto had resolved, that the proper mode of raising the money is to raise it from the Companies of London, who, your lordships well know, are distinct and separate property from the Corporation of the City. It is agreed so to do ; it is agreed, that for the purpose of management this Society is to be formed. Then come the articles of agreement which are entered into by the City of London, representing the persons who are to advance the money on one side, and the Crown upon the other.

These articles of agreement are set forth in the book which I mentioned, at page 22. The first article is,—“ It was agreed by the City that the sum of 20,000*l.* should be levied, whereof 15,000*l.* was to be expended on the intended plantation, and 5,000*l.* for the clearing of private men's interests in the things

demanded." The City agreed to raise 20,000*l.*; and ultimately 20,000*l.* was found not to be sufficient, and the sum of 60,000*l.* was expended by the Companies of London upon this undertaking.—There was, indeed, a larger sum than that — ultimately, as large a sum as 130,000*l.* No single farthing of money came from any other source; it all came from the Companies of London. They say, "it was agreed by the City that the sum of 20,000*l.* should be levied, whereof 15,000*l.* was to be expended in the intended plantation, and 5,000*l.* for the clearing of private men's interests." I suppose some dormant claim.

Now hear what is imposed upon them:—"At the Derry, 200 houses should be built, and room to be left for 300 more; and that 4,000 acres, lying on the Derry side, next adjacent to the Derry, should be laid thereunto, bog and barren mountain to be no part thereof, but to go as waste for the City; the same to be done by indifferent Commissioners." Also, "that the Bishop and Dean of the Derry should have convenient plots of ground for the sites of their houses at the Derry. Fourth, Coleraine should be situated and built on the abbey side, and that 100 houses should be built thereon, and room left for 200 more; and that 3,000 acres of land should be laid thereunto, viz. 1,000 acres to be taken on the abbey side, next adjacent to the town; and that if it should please the King's Majesty, at his charges, after some good proceeding in the plantation, to erect and maintain a bridge, in perpetuity, for a common passage over the river, between the town and county of Coleraine,—then it was agreed the other 2,000 acres to be taken on the other side of the river, otherwise the whole 3,000 acres were agreed to be taken on the abbey side, next adjacent to the town of Coleraine." Then all they undertake to do is, to build 100 houses, to leave room for 200 more, and to leave 3,000 acres of land, either upon the one side or the other; and to leave room for a bridge, according as the king may please to build one at his charges. "That the woods, and the ground, and the soil of Glanconkene and Killetrough, extending from the county of Coleraine to Ballinderry, be wholly to the city in perpetuity; the timber trees of

those woods to be converted to the furtherance of plantation, and all necessary uses within Ireland, and none to be made merchandize." I believe that is important. The City is to have the patronage of the churches; that the 7,000 acres shall be in fee farm; then, 14th, "That the salmon and eel fishing of the rivers Bann 'and Lough Foyle——"

Sir C. WETHERELL.—What city is that mentioned just now?

Sir W. FOLLETT. — Your city. Our city, I should rather say; for I believe I have the honour of appearing for the City of London in this case; in fact, that is for the Companies of the City. Then the 14th is, that the salmon and eel fishing of the rivers of Bann and Lough Foyle, and all other kind of fishing in the river of Lough Foyle, so far as the river floweth, and in the Bann to Lough Neagh, should be in perpetuity to the City. That which I now call your lordships' attention to, has become one of the most important parts of the property, *viz.* the fisheries ——

Mr. KNIGHT.—I think that is only a figure of speech, that you appear for all the Companies, because I believe you appear only for the Skinners' Company. The bill has been amended several times.

Sir W. FOLLETT. — Then comes the part imposing a burthen upon the City of London, which is not a burthen to be performed immediately, but a continuing burthen; and that is, "that the City shall have the castle of Culmore, and the land thereunto in fee farm, they maintaining a sufficient ward of officers therein." Your lordships will see, by and by, the mode in which that has been altered; but one of the conditions was, that they should have the castle of Culmore and the land thereunto in fee farm. That was acceded to, the Company undertaking to keep up the ward in the castle. Then the 27th article is the only one which imposes any other burthen upon the City, that is this: "that the City should with all speed set forward the said plantation in such sort as that there should be sixty houses built in Derry, and forty houses in Coleraine, by the 1st of November then next following, with convenient fortifications; and the rest of the houses

with the fortifications should be built and perfected by the 1st of November, 1611." That is the whole of the articles of agreement. At that time, the Irish Society, who were subsequently incorporated by the king, did not exist at all. They had been recommended to be formed, but they did not exist at the time; and the *parties* to the agreement therefore were the *City of London*, who represented and who acted on behalf of the Companies of the City of London. Indeed, I do not believe that at that time they ever claimed any thing else, as my learned friend now sets up a claim before your lordships.

Now those articles having been entered into, what was done immediately after that was the formation of the Society; and I may read from their own book, in page 27, the history they give of the formation of that Society. Having first said that one part was signed by the Secretary of the Privy Council, and the other by Sir Henry Montague, *and sixteen other persons*, being the committees *appointed by act of Common Council* on the behalf of the *Mayor and Commonalty*,—then they say, this agreement being thus executed by the parties, the Court ordained that, for the purpose of conducting the said plantation, a Company should be constituted and established within the City of London, which should consist of one governor, one deputy to the governor, and twenty-four assistants.

Sir C. WETHERELL.—It may be convenient here to state that the governor is not before the Court.

Sir W. FOLLETT.—I am sorry to say that Mr. Alderman Thorpe, to whom my learned friend alludes, is dead; but the Corporation is here.—“ And that the governor and five of the said assistants should be aldermen of the City of London, and Mr. Recorder of the City should likewise be one of the same assistants; and the deputy and the rest of the assistants should be commoners of the same City; which Company thenceforward in every year should be elected and chosen at the first Common Council to be held after the feast of the Purification of the Blessed Virgin Mary, at which time the deputy and twelve of the assistants for the year precedent might be removed, and one other deputy and twelve other assistants

in their stead should be newly elected, to join with the other twelve assistants that were not removed, for the year ensuing; and the next year those that continued the year before might be removed; so that twelve of the assistants might continue the space of two years." These regulations were ultimately adopted in the Charter. This Company was formed by a recommendation of the Common Council, consisting, as it then did, of members of the Companies of London. They directed the formation of this Society for the purpose of protecting the interests of those parties who were to be the undertakers in this plantation: I think upon that subject there can be no doubt whatever.

My Lords, after that Society was formed, the next thing in the order of date is the Charter from King James I.; and I think I can put your lordships in possession of the effect of it.

Mr. KNIGHT.—I have not offered copies of the book, because neither my learned friends nor your lordships intimated any wish upon the subject; but if your lordships should wish to have copies of the book, I can furnish them.

Sir W. FOLLETT.—Of course, copies will be handed up; but this Charter is not in the book. I was going to state what is the effect of this Charter. The Charter, in effect, first of all creates the county of Londonderry, and the town of Coleraine as now situated in that county. It gives the name of Londonderry from the city of London having undertaken this plantation; and it grants a charter of incorporation to the town of Londonderry. The charter of Coleraine is a distinct document. There was a charter for the city of Londonderry, and they created the county in that document. It then incorporates the Irish Society, which had been formed by the Directors of the Common Council, and adopts the regulations I have read as the proposition of the Common Council. Having created the Irish Society, the Crown gives to the Irish Society a control over the by laws of the city of Londonderry; it gives them a power to control the municipal regulations of the corporation of Londonderry; and then it gives them a power also to act on behalf of the



City of London, and to send directions on behalf of the City for the plantations in Ireland.

That I believe is shortly the effect of that charter. But now comes the most important part of this charter. The Crown having adopted the suggestion of the Common Council of the City of London to incorporate the Company which they had created, then proceeds to *grant to that Irish Society the whole of the county of Londonderry*, the town of Londonderry, and also the lands which are set out at considerable length in the charter, described by their limits and bounds, and which, I believe, comprised all that the king had undertaken to grant to the City of London. The fisheries and woods,—in short, every thing connected with that property, was granted to them:—there is no declaration of trust in that charter, and the point, therefore, which my learned friend contends for here to-day, would in point of fact just as well arise if we stopped here, as it would in other parts of the case. My Lords, I say upon that charter, that the Irish Society were trustees for the persons that were to advance the money and to receive the land. They were not to advance any money, and they were not to hold any land. The land was given to those representing the undertakers in this transaction; and I apprehend that they became trustees for every single acre of it, and for every part of it for the undertakers of that plantation. Your lordships will see that no dispute arose upon that point at all; nobody doubted it; they took the land as trustees, and they acted as trustees: and your lordships will see that they acted fairly and properly in furtherance of that trust: no dispute arose about it, nor has any arisen till within the last two or three years.

My Lords, the land having been so granted to those trustees, the next question is, in what mode the undertakers are to receive their land; because, although at the request of the Common Council this Society was formed, it never was contended that the Society were to hold the land even as trustees; but immediately after that, the parties interested in it met to ascertain in what way the lands were to be divided. For that purpose, two gentlemen, Mr. Smithies and Mr. Springham are

sent to Ireland, and they received instructions from the Common Council of London, which I will read to your lordships: "And forasmuch as in so noble and worthy a work, (meaning said plantations so taken to heart by His Majesty,) and whereas this city, (meaning said several Companies,) upon the hopeful success thereof, hath already expended and are like further to spend great sums of money, it was generally thought fit, as a matter much importuning the advancement of said work, as well as for the general satisfaction of the several Companies of the City, who have undertaken the same, as also for accommodating such other affairs and circumstances as from time to time hereafter shall be offered to the further consideration of this Court, that some great and worthy magistrate of this city, accompanied and assisted with some commoner, of special countenance and credit, be sent into those parts on behalf of the City, to take an exact notice, view, and account, of the whole work of plantation, and of every circumstance, thing, and things pertaining thereto."

Then they go to Ireland and make a report; they go at great length into the divisions of the lands; and soon they point out the changes, and the messuages, and the reformati<sup>o</sup>ns that are necessary; and what ought to be done, and the extent and measurement thereof. The whole of this is done by the City of London on behalf of the Companies, who they say are the undertakers. It is done by the Common Council of London. Then their report ends in this way:—"Whereas it has been generally decreed, that a division should be made of all the lands by and amongst the several Companies undertaking the said plantation:"—it then goes on to state, "that they had made equal divisions of the said lands into twelve parts;" and the said report then proceeds as follows, (that is to say)—"But for the City of Londonderry and the 4,000 acres there, and the town of Coleraine and the 3,000 acres apportioned to the same, the territories, the ferries and the fishings, we are of opinion that a division cannot be fitly made of them; but the rents and profits of them may be divided and go amongst the several Companies."

Now your lordships will observe, that no distinction what-

ever is made between the lands that were to be divided, and the lands that were to remain in the hands of the Irish Society. The reason of their so remaining is given; these lands were all to be around the towers, the 4,000 acres at Londonderry, and the 3,000 at Coleraine; and the ferries and fisheries cannot well be divided, therefore let them remain undivided, and the rents and profits of them go amongst the several Companies.

Then there is another part of this report to which I call your attention for another purpose:—"And we advise, that upon the division it be proved, that where a proportion of land shall want timber to build with, that the Company to whose share it shall fall into, may have sufficient timber out of the woods next adjoining, and fittest for that use, to be assigned to them by the City agent. I refer to that, because your lordships will find in a further part of these proceedings the same recommendations are given for the stones and materials of building; and therefore when the Irish Society came to make the divisions amongst the Companies, the timber upon the different estates, and the materials for building, are reserved in the Irish Society, so that the parties all had them in common, and any person that wanted wood, might go to any estate for the purpose.

Lord Commissioner BOSANQUET.—What is the expression?

Sir W. FOLLETT.—"That they have sufficient timber out of the woods next adjoining, and fittest for that use, to be assigned to them by the City agent." They then go on to report the fortifications of the town of Derry. The only reason why I refer to this is, that your lordships may see that this is not done by the Irish Society, but it is done by the Companies themselves. Then comes this, which report being openly read, was, in all points, approved and allowed. "Therefore the report recommended that there should be a division into twelve parts, and the Common Council agreed to the report."

"That the Irish Society remove one of their agents," who was supposed to have acted improperly,—John Rowley, [*reads an extract.*] Then, again, at the end, they say, that "the parties shall examine into the accounts of Tristram Beresford, one other of the City's agents in Ireland, for receipts and payments in and about the said plantation, and also the account

of John Rowley, thereinbefore named, that had or should be made, and likewise all other accounts concerning the plantation aforesaid, and receipts and disbursements touching the same;" so that at this time there was no dispute as to the relative position of the parties. One party were for the absolute beneficial owners, and the other the party appointed on their behalf, to carry into effect the intentions of the king towards them.

Now, these reports having been made, the lands still remain in the hands of the Irish Society, and had been granted to the Irish Society without any declaration of trust: and then comes this proposal for division. Now, what takes place upon that? Perhaps I should first read to your lordships the statement which the Corporation themselves make of this report; your lordships will find it in page 34 of their book; they say this:—"The two commissioners stated in their communication to the Court, that as it was generally desired that a division should be made of all the lands in Ireland, by and amongst the several companies undertaking the plantation, they had with great pains first viewed the lands, and carefully inquired after the true value of every district; and with the assistance and advice of the gentlemen of the county, the City's agents and surveyor proceeded to make an equal division of the lands into twelve parts, the manner of which they presented to the Court; but with respect to the city of Londonderry and the town of Coleraine, with the territories, ferries, and fishings belonging to the same, they were of opinion that a division could not fully be made of them, but the rents and profits of them might be divided amongst the several Companies." That is the statement of the Irish Society in this book.

Then they proceed to the division. It is also stated, in page 34, that, "at a Court of Common Council, convened soon afterwards, Mr. Alderman Cockaine, the Governor of the Irish Society, represented to the Court and the Masters and Wardens of all the several Companies then assembled, that a division of the estates, which was proposed to be made in Ireland, belonging to the plantation, had been made into twelve parts, which were particularly expressed on twelve several sheets of paper, the same being numbered from

one to twelve inclusive ; and that, answerable to those proportions, the Committee for the plantation had prepared twelve pieces of paper, each piece having one of the aforesaid numbers thereon, which were rolled and tied up severally, like lots, each lot referring to some one of the same twelve proportions of land, which twelve lots were brought into the Court by the Governor, in a box by themselves. That the whole monies disbursed already in and about the said plantation, amounting in all to 40,000*l.*, were, on the other hand, subdivided and brought into twelve like several equal portions of money, each portion consisting of 3,333*l.* 6*s.* 8*d.*, all which portions, being added together, made up the sum of 40,000*l.* ; and that in the same subdivision, this course had been taken, that so many of the Companies of the City which had contributed towards the said plantation, as made up one full portion of 3,333*l.* 6*s.* 8*d.*, according to the several sums by them already disbursed, had been added and joined together ; and that in every of the said twelve proportions of money, one of the twelve principal Companies stood as chief, and unto that principal Company, not having of itself expended so much money as amounted to a full proportion, were added and joined so many of the inferior Companies as, according to their several sums by them already disbursed, made up a full proportion of 3,333*l.* 6*s.* 8*d.*, as near as possibly might be. And where the sum of any Company already disbursed exceeded the last-mentioned sum, the said Company was joined to some other principal Company for the overplus ; and inasmuch as the Companies joined together to make up a proportion of money, and their sums did not altogether make up an even proportion, but some happened to be more and others less than a full proportion,—in that case, the Companies so joined together were rateably to pay to, or receive from, the Treasurer of the said plantation, that which should be more or less than a full proportion ; which Companies' names that were so joined together to make up the said twelve proportions of money were in like manner severally written on twelve several pieces of paper, together with the sum of money disbursed by each Company, and were afterwards, in like manner, rolled, and tied up together like lots, and were brought

likewise and presented in Court by the Governor in a box by themselves. And the same particulars were also written together on a sheet of paper, and subscribed with the names of the Committees for the said plantation."

The arrangement was as follows: "The assessment already made upon the several Companies of London towards the plantation in Ireland, was 40,000*l*."—I forgot to state to your lordships the mode in which the Companies raised this money. They pointed out that it should be levied according to a corn rate, and that was agreed to. The mode in which it was done was, that the City made an assessment which was sent to the Companies, calling upon them to advance their quota of the money;—that was done; and at the time the division was made, the Companies had advanced the full sum of 40,000*l*. "The said sum being divided into twelve parts, gave for each 3,333*l*. 6*s*. 8*d*. The lands in Ireland being allotted into twelve parts, it was considered most fitting that the same should be divided under the names of the twelve Companies, and divers of them to have inferior Companies joined unto them in the following manner."

Now the whole is set out at pages 36, 37, and 38, in the book. There are the Mercers, who are said to have advanced the sum of 2,680*l*. There are four inferior Companies joined to them. Then come the Grocers (in part), 3,333*l*. 6*s*. 8*d*. The Vintners, and so on, going through the principal Companies of London.

Mr. KNIGHT.—Each with a tail?

Sir W. FOLLETT.—Each with a tail. Then the following Companies are to pay and the following are to receive. These are very small sums, not very important. Then this book goes on to state, at page 38:—"The estates in Ireland (except the city of Londonderry, the town of Coleraine, their contiguous lands, and the woods, ferries, and fisheries) were immediately consigned to the management of the respective chief Companies and their associates; and conveyances were made to them by the Society, in virtue of their Charter of Incorporation whereby the territories in the province of Ulster were granted to them." Now I beg your lordships' attention to this statement in their own book:—"The houses in Londonderry and

Coleraine, the lands attached thereto, and the woods, ferries, and fisheries, not being susceptible of division, were retained by the Society, who received the rents and profits, and accounted for them to the twelve chief Companies."

We have therefore the admission of all parties, and indeed the history of the transaction is such, that it is hardly required, because it is plain that when the king granted those lands to the Irish Society, he granted them to them to hold in trust for the undertakers of the plantation, and that they were bound to make division of them amongst the undertakers of the plantation, that is, amongst the twelve Companies of London; and if the twelve Companies of London, instead of reporting that, had reported that they would have the houses in Coleraine and Londonderry, and the lands and fisheries, divided amongst the Companies, the Irish Society would have been bound to do so, and would have divided that amongst them; but they report that it is more convenient that they should not, and the Irish Society act in obedience to their *cestui que* trust; they held it in their own hands, and they divided the rest, and they divided the rents and profits of what remained in their hands. As early as 1614, there is a dividend paid upon their property.

My Lords, there is one part of this division which is not in the printed book, which is this: "Before the same were drawn out," that is, the lots, "the said Governor made known that it was agreed that the particular points following should be observed."

Mr. KNIGHT.—Where are you reading from?

Sir W. FOLLETT.—From the extract of the proceedings of the Common Council.

Mr. KNIGHT.—Is it in the pleadings?

Sir W. FOLLETT.—Yes, I believe it is. It is the division on the 17th of December. It is the same document I was reading. It is in the answer. "It was agreed that the particular points following should be observed." "That whereas some proportions of land," &c. &c. [*reads an extract.*] So that your lordships observe, the timber and building materials were to be in common.

Now this being done, the Companies of London take possession of the estates. Those estates have been in the possession of the greater part of those Companies down to this moment; some of them have been sold to private individuals, and have been held under those titles; and I believe it never has been disputed, and never can be disputed, that the Companies of London hold those estates in fee simple, subject to fee farm rent, which is as good a title as any one in England or Ireland could hold those estates by: the others still continue to hold them. It is contended that some distinction is to be made between that and the divisible property. Now I ask your lordships, upon the history I have given, is there the slightest pretence for it? Is there the slightest pretence for saying, that the indivisible property which remained in their hands—for the reasons which your lordships have heard, and for the purpose of their receiving the rents and profits, and dividing them rateably among the Companies,—stands upon a different footing from the divided property? But I will go on with the history of these proceedings, because every step that we take will show your lordships how utterly unfounded is their claim.

The next thing done is, that the king writes a letter to the Lord Lieutenant of Ireland, (set out in their book at page 40,) complaining that the undertakers had not complied with that condition. In page 42 he thus states:—"Yet we are pleased, in grace, and that they may be the more inexcusable if they be deficient in their duties hereafter, to assign them a further time." They were to do it in two years: but the king says, We will assign them a further time, "which will be the last day of August come twelvemonths, which will be in the year of our Lord 1616, which we are determined shall be final and peremptory unto them, and at which time we are resolved to seize into our hands the lands of any man whatsoever, without respect of persons, whether he be a British undertaker, servitor, or native, that shall be found defective in performing any of the articles of the plantation to which he was enjoined:"—so that a further time was given up to the last day of August, 1616.

Now at this time, although the division had been made in the Common Council, and although reports had been made and



the lots had been drawn, no conveyance had taken place of the lands. But after this August 1616, in the month of September in that year, the king grants a license to the twelve Companies of London to hold the land in mortmain, and for the purpose of enabling the Irish Society to keep the indivisible property in their hands, and to carry into effect fully what had been agreed to; the Irish Society had also a license to hold land in mortmain. Upon that, the Irish Society convey to the twelve Companies; they make feoffments to each of the twelve Companies separately, in the proportions according to lots which they had drawn: under those feoffments the timber and the materials for building are reserved. So that your lordships will observe it stood thus—that part which the Companies had agreed to divide was conveyed to them separately; that part which was to be indivisible, namely, the lands about the towns, and the fisheries, were held by the Society; but the character in which the Society held them it will be for my learned friend to satisfy your lordships that it was not as trustees for that Company that those feoffments were made.

My Lords, before those feoffments were made there was another deputation sent on behalf of the Companies to Ireland; Mr. Alderman Proby and Mr. Springham were sent to Ireland; they mention that in their own book. In page 45 the proceedings are set out at full length:—"The Society represented to the Common Council the necessity of sending two persons into Ulster to view and examine the state of the plantation, and to make a report thereof on their return; accordingly, the Court elected two persons for that service, who were not on the Society; but they afterwards declining it, the Court enacted that the Governor of the Society, Mr. Alderman Proby, and Mr. Matthias Springham, one of the Assistants, should proceed to Ireland, at the expense of the general fund of the plantation, with full powers from the Court to view, examine, and regulate whatever was necessary in regard to the affairs of the plantation; and an authority in writing, under the common seal of the City, was made out, and instructions were delivered to them." Then came in order the feoffments.

There are some other proceedings which I will not read,

but merely refer to them which are long subsequent to these feoffments. After the king had given this license, applications were made in the early part of Charles the First by the City of London, to do other works in the plantation. The City of London answer, on behalf of the Companies, We have done what we undertook to do, and we shall do no more. They refer to the articles of agreement; they say, 'Those articles of agreement are performed, we have done what we undertook to do, and we shall do no more. And I apprehend it to be quite plain that, according to the terms of those articles of agreement, if they had built the houses which they said they had, and put the fortifications in order, and complied with the other conditions, the king had no right to call upon them to do any more.

But at that time the rights of parties were not very strictly attended to. In the reign of Charles the First informations were filed against the Companies, and against the Irish Society, in the Star Chamber, one in the sixth year of the reign of King Charles, and the other in the eighth. Your lordships are perfectly well aware of the mode of proceeding in that Court. Of course it was enough for the king to find it more convenient to him to have this property in Ireland, now that a large sum of money had been expended upon it, in his hands; and the Star Chamber gave judgment against the City of London, fining them 70,000*l*. A *scire facias* was afterwards filed in the Court of Exchequer against the Irish Society, and against the twelve Companies, for the purpose of repealing the letters patent, which contained that grant, and for getting a surrender into the hands of the Crown. There again your lordships will observe the Crown treating the Irish Society as the party representing the Companies of London.

Now these proceedings having taken place in the Star Chamber and in the Court of Exchequer, the City of London presented a petition to the tribunal which was then supposed to be the proper one to redress all grievances, namely, the House of Commons. It was some time towards the close of the reign of King Charles the First that they first presented a petition to the king. It was in this form: "The humble

petition of the Mayor, Commonalty, and Citizens of the City of London, most humbly sheweth,—That your Majesty's royal father, of blessed memory, by his letters patent, dated the 29th of March, in the eleventh year of his reign, incorporated twenty-six citizens of London by the name of the Society of the Governor and Assistants of London of the new Plantation in Ulster, in the kingdom of Ireland, to consist of Governor, Deputy, and twenty-four Assistants; and by the same patent granted to that Corporation, the county of Londonderry, and other lands and possessions there; which grant was in trust for the several Companies of London, and the particular men that disbursed the money towards the plantation." This is the statement of my learned friend Sir Charles Wetherell's clients, as to who the parties were trustees for: "And by the same patent ordered, further, that the said Society of Governor and Assistants should be yearly elected and appointed by the Mayor and Commonalty of London at their first Common Council after Candlemas-day, such manner as by said patent appears. That upon an information in the Court of Star Chamber by your Majesty's Attorney General against your petitioners and the said Society of Governor and Assistants, it was, amongst other things, decreed by that Court, that said patent should be forthwith surrendered to your Majesty and brought in and cancelled. Your petitioners further shew, that they find it very convenient and necessary to call a Common Council, as well touching the matters in difference between your Majesty and this City, as for divers other occasions, that being trusted to choose the Governor, Deputy, and Assistants of the said Society for the benefit of the Companies that made up the body of the City, and were no parties to the suit." That is their statement, and it is impossible that any thing can be more clearly stated as to how this originated. Then they go on to say: "Wherein the said decree was made, if your petitioners should forbear the choice at a Common Council, it would, as your petitioners conceive, be a breach of trust in them; that the election would not, as your petitioners conceive, be in any prejudice to your Majesty's title to the said possessions, or lessen the force of

the judgment for it; and yet it might be held a contempt in your petitioners, without your Majesty's gracious dispensation: your petitioners do therefore most humbly beseech your Majesty to give way, that they may at the Common Council make election, and that the contempt in so doing may not be prosecuted against them; and your petitioners, as in duty bound, shall ever pray." That was before the *scire facias*: it was presented in order that the City, representing, as they say they do, the interests, and protecting the interests, of the twelve Companies, may appoint the Assistants of the Irish Society. That is the first time we have the City of London making a statement upon the occasion.

My Lords, the City of London presented also a petition to the House of Commons. This is the petition of the Mayor and Commonalty of the City of London: "That about July, in the seventh year of the reign of his said Majesty, James the First, a proposition was made by the Lords of the Privy Council to undertake the plantation of divers lands of great extent in the province of Ulster, in the remote parts of the north of Ireland, (but at that time deserted by other planters;) which the City at first refused, but upon the pressing importunity of said Lords, that some selected persons from the City might be sent to view the country, and that said plantation might be undertaken, and upon signification of his said late Majesty's earnest desire to further said work, and upon tender of large privileges and immunities to invest them thereunto, certain persons of said city were employed to view the premises; and that upon their return divers aldermen and commoners were appointed to take into their consideration how so great a work might be performed, and money raised for the doing of it; by whom it was conceived that it was fittest to be done by the Companies of the City, meaning said corporate companies within said City of London, and in the companies by the poll; and that the plantation should be managed by a Company to be erected for that purpose, who should take a grant of the lands from the king, to the end that they should assign them over to the use and benefit of such from whom the said monies were to be raised. Whereupon, in January,

1609, special articles were agreed upon between the Lords and said Committee, the general articles of plantations being received by the City, and 20,000*l.*, whereof 5000*l.* should go," and so forth. Then they go on to say that they have spent more, and they refer to the articles in the undertaking.

This is a long document; and I will read to your lordships those points which are important. They state this, "and that the Corporation of the said City of London never undertook the said plantation, or as to the use of the said City disbursed any money thereabouts." Now I beg your lordships' attention to this; because if my learned friend says any thing about the City of London, it is perfectly plain what the City of London had to do with it; "but that their name was only used for the better transaction of that business, and only as a means to forward the plantation and raise monies by and from the several companies." This is the statement of the City very soon after the matter had taken place. Then it goes on:—"The said new corporation of Governor and Assistants of London was erected, and to them and their successors were the premises granted by the letters patent of 29th March, 1613, to the end that they might distribute the same to the several Companies of the said City, that had borne and were to undergo the charge of the said plantation. And in pursuance of said intentions, said Society having a license from the then king, granted divers great quantities of said lands to the twelve chief Companies of London, and retained in their own hands such things as were not properly divisible for the defraying the general works of the plantation in and about such works, in hope to have in future enjoyed some benefit of their great cost. There was expended by said Society and Companies above 130,000*l.* besides many thousand pounds laid out by their tenants, whereupon they built the city of Londonderry:" and so on.

We have, therefore, the acts and declarations of these parties so far. We have the acts of the Irish Society, plainly shewing that they were trustees for the Companies; we have the declarations of the City of London, that the Irish Society was formed for the express purpose of being trustees for the

Companies, and that the City of London had nothing to do with it, except to manage it on behalf of the Companies; so that the lands so divided and those not divided, were both held in trust for the Companies.

My Lords, in consequence of this petition to the House of Commons, the House of Commons came to a resolution reciting those facts,—reciting the fact of the grant and the division of the land, the money advanced by the Companies, and the part retained in the hands of the trustees, because it was not divisible; and then they go on, and recite those proceedings in the Star Chamber, and in the Court of Exchequer. They also heard Counsel at the bar; and the king himself appeared by Counsel at the bar; and the House of Commons came to the resolution, that those proceedings in the Star Chamber had been illegal; and that those Companies ought to hold the lands which had been granted to them; and that the Irish Society ought to hold the lands which had been undisturbed by the Crown; and the king acquiesced. But nothing was done during the reign of King Charles the First. Oliver Cromwell granted a fresh charter; but that charter, of course, was held not to confer any right upon the Restoration; and the charter under which the parties now hold is the charter of King Charles the Second, which was granted immediately after the restoration of that king. I was going to read to your lordships from the Proceedings of the Court of Aldermen what took place in the year 1650; it is in the Report of the Court of Aldermen, page 19; the date is the 30th of April, 1650.

Mr. JACOBS.—Is it in the answer?

Sir W. FOLLETT.—I believe it is. This was in 1650, which was during the time of the Commonwealth. Mr. Alderman Fitzwilliam and Mr. Alderman Newell, appointed to treat, &c. &c. [*reads the passage to the words* “building the said towns, and planting the said lands.”] This is again a declaration of the City of London.

Lord Commissioner BOSANQUET.—Who are *we*?

Sir W. FOLLETT.—This is a Report of the Court of Aldermen: the Court of Aldermen resolved, that a Committee from the Court of Aldermen should meet the persons chosen by the

Company, and skilfully make their report to this Court in writing; and then certain aldermen are appointed to meet the Companies; and then comes this joint Report: "And that the said town, lands, and fishings, and customs, were enjoyed for many years in virtue of the grant," &c. &c. [*reads the Report to the words* "into the Repertory."] That is the Report of the Court of Aldermen.

Now upon this, which your lordships will observe is a proceeding on the part of the City of London, that is, on the part of the Mayor and Aldermen, directing some of their Aldermen to meet a Committee of the Companies for the purpose of making a report—a report is made; and this report states, that the Irish Society was appointed for the purpose of taking the lands for the benefit of the Companies of London. They then go on to state the fact of the proceedings in the Star Chamber; they record the application to the king, and they state the effect of it:—that an application was made, and that by the government at that time a fresh charter was granted to the Irish Society, so that matters remained upon this remonstrance to the government, precisely as they had done before the proceedings at the Star Chamber. But the document is valuable, not only as shewing the proceedings upon the reversal of the decree of the Star Chamber, but as shewing the understanding of every body at that time; and I think we shall shew that they have been consistent throughout; we can find no trace of any thing to the contrary in any part of the proceedings. This charter was acted upon during the time of the Commonwealth. Upon the restoration of King Charles the Second, it was thought right to grant a new charter, and that charter, of course, takes no notice of the charter in the time of the Commonwealth. That charter is set out in the printed book; and with the exception of the recital, that charter may save your lordships the trouble of looking at the charter of King James the First, because, as far as regards the creating of the county of Londonderry, incorporating the town of Londonderry, the creating of the Irish Society, and the power given to the Irish Society, it is the same as the charter of King James the First; and it proceeds like that again to grant all the lands to the

Irish Society, in the same way as had been done by the charter of King James the First; and then having regranted those lands to the Irish Society, the Irish Society again hold the lands without any express declaration of trust in the charter: but, again, no doubt can be entertained that they were trustees for the Companies of London; and they proceeded again in the same way, because they again made the feoffments to the different Companies of London, according to the divisions of the portions pointed out by the act of Common Council in the early part of the reign of King James the First. The properties granted to the Companies were again conveyed to them by feoffments, and the part that was indivisible remained again in the hands of the Irish Society; and things were put in the same position as under the charter of King James the First; and with the same point unquestioned, that they were trustees for the benefit of the Companies entitled to the benefit of this grant.

I believe I have stated to your lordships the substance of that charter before. I do not think it necessary to trouble your lordships by reading the words of it;—but the first thing that takes place immediately after that charter, is the act of the Irish Society again acknowledging themselves to be trustees for the grant of those lands in holding the property and in dividing the profits. But there is not only that, but I will show your lordships now what has taken place since the grant of the charter of King Charles. They refer in the schedule of their Answer to a certain Case which was submitted by them to the Council in Ireland. I am reminded to state to your lordships, that the dividends have been regularly going on; and now they pay some dividend, but they claim the right of holding a certain part. When I say *now*, I mean up to the time when they asserted these rights; they paid the dividends up to the last four years, when they set up this claim. They have paid none since.

Now I was going to call your lordships' attention to this case, stated by the Society in the year 1715: they say this:—“The said lands granted by letters patent to the Society,” &c. &c. [*reads the Case.*] Then here is the opinion which they set



up:—"I am of opinion that the Society have nothing to do with the government of the corporation of Coleraine," &c. &c. [*reads the Opinion.*] That is the opinion which they set out. Now whether it was the law or no, as regards the opinion, it is clear that the statement they made was that they were trustees of that property on behalf of the Companies. The extent to which they were liable was another matter.

It may be worth while to call your lordships' attention to the peculiar mode in which they have thought fit to disburse money for defending the rights of the Corporation of Coleraine; for your lordships will observe, that within the last two or three years they have thought fit to expend money in election expenses of one of the Governors of that Society, who had an ambition to get into Parliament, and to represent the borough of Coleraine. They thought fit to advance a part of the funds of the Companies to pay the expenses of that election; and they defend it in their answer upon the ground, that, although directed to secure the return of that gentleman, they were indirectly defending the rights of the freemen of Coleraine. But what I have just read was their statement in 1715. There are other opinions set out. Amongst others, the Common Serjeant of the City of London: he says,—“I am of opinion that the Society have ——” [*reads the Opinion.*] So far, at least, my learned friend will not dispute the law of that opinion. They claim to-day that they have that right. The Common Serjeant of the City of London was of opinion in the year 1715, that they were trustees for the Companies; and the opinion of this city officer was, that they had no right whatever to do any thing with that money except as trustees for the Companies.

I believe, in point of date, I might have called your lordships' attention to an earlier admission in an answer in Chancery. It was as early as January 18th, 1683; it was an answer of the Irish Society to a bill filed by the Bishop of Derry. They disown any encroachment upon the fishing belonging to the complainant. This is a bill relating to the fisheries of the river, which are a part of the indivisible property in dispute. Here is a statement in the year 1683, that

they are in no way concerned or interested, but as trustees of the several Companies of the City of London.

It appears that at various times several applications were made to the Companies of London, or rather to the Irish Society, for the purpose of making advances of money for the benefit of the towns of Londonderry and Coleraine; but I do not find any particular trace of that title after the civil war in Ireland in the time of King James the Second, when the famous siege of Londonderry took place. An application was then made on behalf of Mr. Walker, whose name is illustrious for the defence of that city, for some money for the purpose of rebuilding and reinstating the houses which had been destroyed during the siege, and for the benefit of the persons that suffered. The Society had no money to advance, because they had divided the rents and profits among the Companies. They forwarded the application to the Companies of London; the different Companies agree to advance 100*l.* apiece, and these 100*l.* apiece are advanced by the different Companies. There is no pretence that the Irish Society had any right to advance a single penny out of those funds: they had none to advance, for they had paid all the rents and profits to the different Companies. They say in their books,—“Petition by Mr. Walker,” [*reads a passage to the words, “for consideration.”*] Then again,—“Ordered that 30*l.* be paid out of the monies advanced,” &c. [*reads to the words, “sufferers by the siege.”*] Here again the Companies employ them, and they act for them in the distribution of their bounty. Then, upon the petition of officers who served in the siege, the Society make a recommendation [*reads the same.*]

Now I have referred to this document, because we have been anxiously looking through the disbursements of this Society, to find whether they have taken upon themselves to disburse monies upon the affairs of Ireland. We find that they did advance money to the sufferers at the siege of Londonderry, but that they received that money from the twelve Companies; and they do not pretend to have had any the slightest control over any part of the monies in their hands.

I am sure, after this evidence, it would require very strong

evidence indeed to satisfy your lordships that we are not putting the right construction upon every thing that had taken place between the parties. But that is not the whole of the proceedings about that time. I find that, in the year 1713, a memorial is presented by the Irish Society to each of the twelve Companies of London.

Now that fact of itself is in accordance with every thing else that has been before your lordships. They are the parties that manage on behalf of the Companies; they receive the rents, and they are to manage the estates as trustees on behalf of the Companies. If any thing appears to those trustees in the management of the estates requiring alteration, who are the persons to whom they are to address themselves? Why the parties for whom they are trustees; and your lordships find, therefore, that, in the year 1713, something having occurred with respect to the timber upon those estates, which rendered it necessary that some direction should be given, the Irish Society made a representation of that fact to each of the twelve Companies of London; and this is the language of it: "The Society of the Governors and Assistants of London of the New Plantation in Ulster, within the realm of Ireland, having at heart the interests of the several Companies of the City for whom they are entrusted, have taken into their serious consideration the state and condition of the said plantations, with respect to the timber trees and woods standing and growing thereupon, which are excepted and reserved to the said Society, as well out of the grant and conveyance to this Company, of their proportion of land in the county of Londonderry, as out of the like conveyance to the rest of the twelve chief Companies of this City, of their respective proportions of land in the said county of Londonderry, and thereupon do think fit to represent unto this Company that the said Society are seized of a considerable salmon fishery and other estate in the said county of Londonderry."

Now, my Lords, in what way? "In trust for this and the rest of the Companies of the City over and besides the several proportions of land granted to the said respective twelve Companies."—That is my case. Here is their own statement, in their

memorial to the twelve Companies, that it is so. "That the tenant or tenants of the said fishery have been supplied yearly with a considerable quantity of staves for casks for packing of the fish taken in the said fishery, which casks have been constantly provided out of the timber trees and woods so excepted and reserved to the Society." Therefore the mode in which this had been done was this: The fisheries had been kept for the common profit of all; the woods had been kept for the common profit of all; then, in order to make the best advantage of it for the purpose of making the fisheries the more profitable, the woods had been applied to make staves, for the purpose of packing the fish for exportation to foreign parts. "Whereby, and by reason likewise of the frequent calls which had been made to answer the occasions of the Society's and Company's tenants for buildings and reparations of buildings in the said plantation since the settlement thereof in the reign of King James I., the said woods are so diminished that they are not likely to furnish supplies for those uses but only for a few years to come; so that if timely care be not taken for providing, raising, and preserving a future stock and growth of timber, the said county will not only be destitute of timber for their necessary uses and occasions, but also the said fishery will be unsupported with casks for packing fish, which will necessarily reduce the yearly value of the said fisheries, now let for 1,600*l.* a-year." This is the representation to the Companies of the mode in which they will suffer—namely, that the rent of this individual property will be lowered. "For preventing whereof, and other mischiefs and inconveniences which must unavoidably attend so false a neglect, the said Society do further represent unto this Company an Act of Parliament, made in Ireland in the tenth year of the reign of his late Majesty King William III., intituled An Act for Planting and Preserving Timber Trees and Woods. The said Society do think fit further to represent, they have been informed not only that the several quantities and kinds of plants have not been planted, pursuant to the directions of the aforesaid Act, upon the lands or proportion belonging to this Company, but that great quantities of young trees or saplings have of late been cut down, sold, and disposed of, to the damage not only of this Company's

freehold and inheritance, but the loss and detriment of the plantation in general. And forasmuch as the said Society do conceive and are advised, that by reason they have parted with their interest in the proportions passed away and conveyed by them to this Company, they have not power either to prevent the waste and destruction of the young woods growing on the lands belonging to this Company, or to call the persons to account for such waste committed, nor to plant on the said Company's lands, or to enforce the due execution of the said Act; and in regard that the interest and advantage which this Company shall have and receive by and out of the profits of the said fishery will be lessened and diminished in proportion to the loss and damage happening to the said fishery, for want of timber to supply the same with cases for packing the fish taken therein, as well as this Company's tenements, will suffer for want of timber for their necessary buildings and reparations; the said Society do earnestly recommend the several matters herein mentioned to the special care and consideration of this Company, that they may provide such timely and suitable remedies as to their discretions shall seem most fit and convenient."

My Lords,—What explanation is to be given of that document, or, I may say, what explanation can be given of any of the documents, consistent with any view of this case, except what is the fact, that they are trustees for the timber, woods, &c. to the twelve chief Companies of London? If they had any interest in it, if they had any discretion to apply the rents and profits, except as trustees to the Companies, why make this representation to the twelve Companies, and state in that representation that the persons who are interested in that fishery, are the Companies to whom that memorial is addressed? Now I do not find any attempt of any sort, on the part of the Irish Society, to deny the fact of their being trustees for those Companies, from that time down to the time when they set up their claim.

Mr. KNIGHT.—What claim?

Sir W. FOLLETT.—The extraordinary claim which they set up in their book they abandon here; for some proceedings were instituted against them, and some opinions taken before this.

**Mr. KNIGHT.**—You have used that word, “this claim,” several times. I should take it as a favour if you will explain what you mean by that word “this claim.” If it interrupts you, I will not make the request, but I declare seriously I do not know what you mean.

**Sir W. FOLLETT.**—It does not interrupt me the least in the world; but I cannot be surprised at my learned friend's not understanding it; we have had the same difficulty. We do not understand the claim that the Irish Society are setting up. My learned friend and myself have had precisely that difficulty; but I know this, that they do pretend to deny that they are trustees for the twelve Companies of London; and when I say that they set up a claim, I say they set up a claim not to be trustees for the twelve Companies of London.

**Mr. KNIGHT.**—Now I know what you mean.

**Sir W. FOLLETT.**—But they claim the funds; and if my learned friend asks me to state what the Irish Society say they are, I am totally at a loss to tell your lordships. I do not know what they say they are.

**Mr. KNIGHT.**—You have answered my question.

**Sir W. FOLLETT.**—But I will go on. As my learned friend has called my attention to it, I say, I do not know what it is they say they are. I do not know whether they say they are trustees for the other parties, or that they have a beneficial interest, or what it is. I know that they did say this; they said, that so far from being trustees for the twelve Companies of London, they have a right to control the twelve Companies of London; that they have a paramount right over them, and not only as regarded this indivisible property, but they said that they had a right of control even over the divided estates. In this book, in page 189, they say, notwithstanding this division of the estates amongst the twelve chief Companies, such estates are to be considered still under the paramount jurisdiction of the Irish Society, and liable to contributions, if necessary, in common with the indivisible estates of the Society. That is the claim respecting which my learned friend asks me. It would be preposterous to set up such a claim; and the moment that they came into my learned friend's hands,

or the hands of his junior, they abandoned such an absurd claim; but they have not abandoned another species of claim, if claim it can be called, or assertion of right—namely, that they are not trustees for the twelve Companies of London. This they are still contending, because, if they were not, they would make no opposition to this motion. If I am asked to state under what right or title they can hold this property, except as trustees of the Companies, I can conceive of no right or title; I can conceive of no jurisdiction over the property, except as trustees for the Companies.

But when my learned friend interrupted me, I was going to state to your lordships another fact, which had occurred in the history of this Society. I have referred your lordships to a Case and Opinion which took place in 1715. I will now refer to one which they have printed in their own book, in page 143; and this arose from a notice given by the Common Council of London, in the year 1817, and, as it appears to me, with as little foundation in right as the Irish Society are here resisting the claim of the twelve Companies to-day:—I so far admit to the Irish Society. The Common Council of the City of London, in the year 1817, gave notice to the Corporation of the Irish Society to return to the Common Council of London their accounts. My Lords, upon that the Irish Society take an opinion, and they have printed it in their book. What they state is in page 143. A notice of motion was given in the Court of Common Council, that the Irish Society do annually lay before that Court a brief state of their accounts; which was afterwards withdrawn. I presume the Common Council were satisfied, upon inquiry, that they were not the persons, but that the Companies of London were the proper persons; but previous to which a case was stated for the opinion of counsel, and the following is a copy of the “Opinions of Mr. Serjeant Joy,” who your lordships know was an eminent counsel in Ireland; “and of Sir John Silvester the Recorder.”

*Mr. Serjeant Joy's Opinion.*—“Of one thing I am perfectly clear:—if the Common Council have no right to call the Society to account for the disposal of their revenues, the Society ought not to comply with their requisitions from motives of courtesy,—such compliance would be an act of acquiescence;

and long succession of such acts would, in process of time, generate right;—besides, every compliance with such a wish would render a refusal still more and more ungracious. It is infinitely better, and will be less offensive to the Common Council, to say at once,—We will not comply with your demand, lest we should make a precedent,—than after having made a succession of precedents to depart from them, from (as it will be said) motives of caprice, or hostility to the existing Council. I am therefore of opinion, that unless the Council shall be considered to have a right to an account, this novel claim of theirs ought to be resisted *in limine*. The next question is,—Have the Common Council a right to call the Society to an account? I cannot discover the slightest foundation for such a claim. The Society superintends the general concerns of the plantation, and is a trustee for the twelve Companies, who are absolute owners of their estate, which are not clothed with any trust, either for individuals, for any other public body, or for a charity. There is clearly, I think, no trust for the Common Council, *as a body*,”—[This is put here in italics, I suppose, because the Common Council was composed of a great number of individuals]—“*as a body* ; I cannot, therefore, conceive why they should demand an account of the disposal of revenues in which they have no interest. I am of opinion, that they are not entitled to such an account, and that the Society ought not to give it. The refusal will, of course, be couched in terms expressive of that high respect to which such a body as the Common Council of London is so justly entitled.” Now, here is an opinion which they themselves have printed in the year 1817, that they are superintendents of the concerns of the plantations, and are the trustees of the twelve Companies, who are the absolute owners of the estate, and who are not clothed with any trust.

Now comes the opinion of the Recorder of the City of London; and there could not be, of course, a more unbiassed opinion with regard to the rights of the City of London, or those Companies, or their estates. He says: “I perfectly agree with Mr. Serjeant Joy in his opinion, that the Society ought not to comply with the requisition made by the Common Council, who, as a body, can have no interest. The Society



superintends the general concern, and is a trustee for the twelve Companies, who are absolute owners of their estates; to them, and to them alone, is the Society accountable." This was the opinion of the Recorder of London, given to this body upon the case, stated by themselves, in the year 1817:—" I do not understand such an application has been made before, and therefore am most decidedly of opinion, that the Society ought to refuse it." And it was refused, and the Common Council withdrew.

Again, in page 149, immediately after stating that the Governor was requested to sit for his portrait, comes this:—" That the opinions of Mr. Serjeant Joy and the Recorder of London having been taken on the liability of the Society to render accounts to the Common Council, (as before stated,) the subject was debated in Common Council, and the Secretary reported to the Society the discussion which took place." After that, these opinions taken by the Society were sent to the Common Council, and the Common Council, by withdrawing the motion acquiesced in those opinions, and upon a case stated by the Irish Society, namely, that they were trustees for those Companies, and were alone responsible to them;—that was in the year 1817. Now in 1830, the Society thought fit to refuse to pay the dividends to the Companies. I believe I have stated to your lordships all the early documents which throw light upon these proceedings; and, therefore, I have not the slightest notion either of what the claim is, or upon what it is founded.

Now what have they done since? In the first place, with respect to the expenditure, since the year 1830 they have expended money upon the elections for the borough of Coleraine. We have charged them with that in our bill; and we have charged the fact that Mr. Alderman Thorpe, a very respectable gentleman, and very fit to be in parliament, was the Governor of the Irish Society. Being the Governor of the Irish Society, and also alderman of the City of London, he thought fit to stand for the borough of Coleraine:—he stood, and was not successful. A petition was presented to the House of Commons; the expenses of the petition the Irish Society thought fit to pay out of the rents and profits of the

lands belonging to the Companies of London, who, for aught I know, might have been of every shade of political opinions, and certainly never sanctioned any such expenditure as that. They thought fit out of this fund to supply the sinews of war for Mr. Alderman Thorpe's election. They do not deny it; but what is the reason they give for defending it? Probably, in looking through these proceedings, there is nothing that would strike your lordships that King James the First had been so extremely anxious about, as that of vesting the right of returning members of parliament in the Protestant inhabitants of the north of Ireland. I have no right, in this cause, to refer to the charter of the towns in the north of Ireland; but your lordships well know, as an historical fact, that the corporations created in the north of Ireland, close, select corporations, were the persons in whom the king vested the right to return members to parliament. The object was clear and apparent: it was to control the inhabitants of that part of the country, if the Irish came in any numbers: the object was to exclude the Roman Catholics from any right to vote in the elections of members of parliament.

My Lords, the corporation of the borough of Coleraine have returned members of parliament down from the granting of the charter of King James the First. The time when the election took place, when Alderman Thorpe was proposed as a candidate, was the time of the fever of the discussion upon the reform bill, and it was thought right to attempt to what is called "open" the borough of Coleraine; and the Irish Society, with a view to the opening the borough of Coleraine, thought fit to apply the funds of the twelve Companies of London.—Now what defence do they make? They say, that King James having granted a charter to Coleraine, they, the trustees of the Companies in London, were justified in applying the funds of the Irish Society for the purpose of getting the right to return the members of parliament in the inhabitants of that town. Why, can any thing be more monstrous than that they should be expending the money of the Companies of London in election expenses? If that were granted to corporations who are trustees, every corporation in the kingdom

might have that justification for expending money in elections. They expend money in returning a member in a particular interest, and they believe that in so doing they are consulting the interests of the inhabitants of the town. That is what the Irish Society say they have a right to do; and I ask whether that is not a gross misapplication of the property of those companies? and whether it is not, as such, a breach of trust? no matter even if they had the reason which they state; but the reason they give is directly opposite to the object of King James the First in granting the charter: but I apprehend it is a gross breach of trust in another way.

Mr. KNIGHT.—My learned friend, Sir W. Follett, has read some documents in the course of his speech, but of course I do not understand him as opening the evidence in this case: when he has closed, I shall call upon him to read proof of all the assertions which he has been instructed to make.

Sir W. FOLLETT.—I have no objection to any course which my learned friend wishes; I have read some of the documents.

Mr. KNIGHT.—My learned friend has read only parts of documents, and has omitted other parts. Those Acts which my learned friend has stated, have not been stated in what appears to us to be a correct manner; and of course the answer must be read to support those statements.

Sir W. FOLLETT.—With respect to this payment of money for the election at Coleraine, I say that they do admit the payment of that money; I say they have justified it by their answer, upon the ground that they were giving effect to the charter of King James to the borough of Coleraine,—that is the view I take of it. Now, with respect to the other expenditure, they have given their accounts. If my learned friend wishes me, I will read those passages of the answer.

Mr. KNIGHT.—I do not consider you now as opening any evidence. I only, to guard myself against being misunderstood, say, that I consider you as opening the case, and therefore I have abstained from interrupting you; but I shall call for proof of every one of those statements, because they reflect very much upon my clients.

Sir W. FOLLETT.—Then I will give my learned friend proof

from their own answer. In folio 59 in the Answer to the Amended Bill, they say, "In or about the year 1831, when said Irish Society consisted of Members of said twelve Companies, an application was made on behalf of the persons claiming a right to be admitted freemen of Coleraine to said Society for assistance against the corporation of Coleraine, which have by degrees become a close, self-elected corporation; and contrary to law and to the charter granted to said town, had excluded divers persons, entitled as inhabitants, to be admitted as freemen of said borough from being so admitted, and had usurped the right of electing a burgess to serve in parliament for the said borough." My Lords, I did not use language quite so strong, but in substance pretty much the same: "that the persons so entitled caused the defendant, Mr. Thorpe, to be nominated as a candidate to represent them in parliament, without his knowledge or concurrence, and without the concurrence of said Society; and that said Society, so constituted as aforesaid, considered it to be their duty to protect the interests of the inhabitants of such borough under their said charter; and accordingly, as soon as they were apprized by said inhabitants of such nomination, in order to try the question as to such usurpation as aforesaid, caused a petition to be presented in the name of their said Governor, to the Commons House of Parliament, in the sessions of 1831, against the return of Sir John Head Brydges, who was returned by the mayor as the member elected for said borough, and in the prosecution of such petition expended a sum of 683*l.* 2*s.* 2*d.*, but were ultimately compelled to withdraw said petition, in consequence of a difficulty as to proving the application of the freemen to be admitted to have been in due manner and form.

Mr. KNIGHT.—You mean to stop there?

Sir W. FOLLETT.—I will read on. They say, that when the Society was remodelled at the election which took place in February, 1832, and the majority no longer consisted of members of said twelve Companies, said Society found themselves compelled to pay the debt incurred by such Society, but did not think it right to take any further proceedings in respect of

the rights of said freemen, which would entail expense on said Society : however, they say they furnished William Taylor Copeland, Esq. one of the aldermen of the City of London, with the information obtained by said Society, in the prosecution of said contest ; and said Alderman Copeland, at his own expense, became a candidate at an election which took place for the next Parliament ; and having a majority of votes (if said parties claiming to be admitted as freemen were entitled to vote, but not otherwise,) also, at his own expense, petitioned against the return of Sir John Poer Beresford, who was returned by the said mayor of Coleraine ; and it was decided by the Committee of the House of Commons, to whom such petition was referred, that said Alderman Copeland was duly elected the burgess for said borough ; and he has ever since represented the same in Parliament, and as in manner aforesaid established the rights of said parties claiming to be admitted freemen under said charter ; and, save as aforesaid, defendants deny that said Society, in the year 1831 or 1832, or at any other time, advanced or paid large or any sum or sums of money, in or about the election of such burgesses or members to serve in Parliament, as in said bill mentioned, or in promoting the election of Members of Parliament for the city of Londonderry, or the town of Coleraine, or of any member for the time being of said Society, or of any person ; and they admit that the aforesaid sum of 68*l.* 2*s.* 2*d.* was derived from the rents and profits of said ferries, fisheries, and town land." Then I put it to your lordships, whether I at all overstated, I think I understated, what they state in their answer.

MR. KNIGHT.—The fact is that you were members of the Society.

SIR W. FOLLETT.—Aye, we shall come to that by and by ; that is to say, the members of the Irish Society had been elected by the Common Council, and they had elected from the members of the Common Council generally, who were members of the twelve Companies ; and that is one strong ground to show they were persons acting on behalf of the Companies ; but does it follow that individual members of the Corporation of London, who are elected into the Society to

be trustees of the Companies, that they have a right to be expending the money of the Companies in elections? I say that it is a gross breach of trust admitted by them. It is a breach of trust taking place no longer ago than 1831, after the time when they ceased to pay the dividends to the Companies.

But that is not all: I say that the funds of this Society have been wasted and misapplied; they have set out their account for eight years, up to the year 1832; they have set out the accounts at length. I charge this Society, which is constituted, as your lordships have heard, by the Common Council of London, and who would no doubt, for the purpose of protecting their interests, be as much as possible persons connected with the Corporation;—I charge them, when they have become members of that Society, instead of attending to the interests of the Companies whom they ought to represent, that they have been guilty of a breach of trust towards those Companies.

This is a part of the accounts; here are the receipts and expenditure for eight years, taken from the accounts ending 1832. The average of the receipts for the indivisible property, from 1824 to 1832, was 10,863*l.* 8*s.* 6*d.* The average annual expenditure for managing this property is 5,034*l.* 9*s.* 11*d.* I do not wonder at my learned friend being astonished. It does seem startling. The receipt is 10,000*l.*, and 5,000*l.* is expended in some way connected with the management of the property. Now I will give my learned friend the heads for the whole eight years. Salaries in Ireland, 4,607*l.* 11*s.* 3*d.*; salaries and gratuities in England, 5,973*l.* 16*s.* 9*d.*; surveying expenses, 18*l.* 12*s.*; law expenses, 8,039*l.* 10*s.* 5*d.*; incidental expenses, Ireland, 3,837*l.* 2*s.* 8½*d.*; incidental expenses in England (I do not know what these can be), 2,729*l.*; depuration ditto, 3,025*l.* 13*s.*; tavern expenses (it does not state whether in England or in Ireland), 3,799*l.* 2*s.* 3*d.*; allowance to members (that is, the members of the Society themselves), 3,413*l.* 10*s.* Every time they meet it appears that they receive a certain sum, and that amounts in eight years to 3,413*l.* Irish chambers expenses, 4,769*l.*; taking the average of that it comes to 5,034*l.* 9*s.* 11*d.* Now I think these come strictly under the head of management: whatever other disbursements they

have made within that time, these at least are the expenses of managing the estate; and I apprehend that your lordships would say that an estate of 10,000*l.* a year must be mismanaged if the expense of that management is half the rental.

My Lords, if the Society have been in the habit, or have advanced any sums towards any public purpose whatever connected with the benefit of the north of Ireland, I state on the part I believe of the Companies generally, and certainly on the part of the Company that I represent, that there is not, and there never was, any wish to control the expenditure. I mean not to find fault with any expenditure for the advantage of Ireland; but when we find those expenses to consist of salaries to officers, and fees to members, and portraits, and tavern expenses, and pieces of plate, and expenses of dinners, running away with half the income, it becomes the duty of the parties interested in this property to inquire into it.

My Lords, these facts alone will satisfy your lordships, that there has been mismanagement of this property. Then, I submit that this Society having no possible means of repaying the Companies of London, having no funds whatever, your lordships will interfere to protect this property. If your lordships are satisfied, as I apprehend that you must be, that they are trustees, this management will satisfy your lordships that we are entitled to have this motion. It is gross mismanagement; it is a breach of trust; it is a refusal to account to the Companies; it is expending money in a way not connected with the benefit of the Companies, and in a way which, as trustees, they have no right to do.

My Lords, I understand it is said, that some part of the money they have expended has always been applied to public purposes in Ireland, in connexion with the promotion of the Protestant Church; and so on. I have looked through the books, and I can find no trace of any expenditure of the Irish Society, down to the year 1682. Then it appears that certain advances were made to the city of Derry; and in 1682, there was a payment to Bennet for some service he rendered. Then there were the grants to the city of Londonderry. We can find only two sums that have been advanced towards the Pro-

testant churches of Ireland: the one was in the early part of the last century, a sum of 100%. ; and the other was in 1792, the sum of 300%. ; but whether under the authority of the Companies or not, does not appear. It appears they have made some advances since the year 1792; they have given a salary to the schoolmaster at Derry, and they have made some advances to the schools there, amounting to but a small sum; and, indeed, the whole did not amount to above three or four thousand pounds down to the year 1819.

Now, as to what they have been doing within the last three or four years, I understand they state that they have been in some respects applying money to public purposes. I say, that if they have done so, although they have no right to do it, those Companies would not have interfered; but the expenditure that we complain of here is an expenditure traceable through the whole of their account; namely, an expenditure for themselves, for their members, for portraits, for pieces of plate for their Governors, for dinners; and they justify that by their answer, that it is the usage of all Corporations to consume their funds in that way. So they may, if they are their own funds; but if they are trustees for other persons, they plainly have no right to make an expenditure of 8,000%. in eight years for tavern expenses.

Then, my Lords, I come to this, which I stated to your lordships at the outset. I undertook to satisfy the Court by the history and origin of these transactions, by all that took place in the reign of King James the First. If we confine ourselves to that alone, that the Irish Society were constituted for the benefit exclusively of the twelve Companies of London, for whom they were the trustees,—that the divided estate and the indivisible estates stand and stood precisely upon the same footing,—that they were conveyed to them in trust for the twelve Companies,—that the twelve Companies took the divided estates, and were entitled to the rents and profits of the indivisible:—if we stood alone upon what took place in the time of King James the First, (but we do not,—we have statements of the Corporation of London; we have statements made over and over again about this; we have a statement of



the Society itself, their solemn answers in judicial proceedings, their statements to their Counsel, the opinions of Counsel, all founded upon the same basis,—that they were trustees for the twelve Companies of London, and for nobody else; and that they had nothing else to do with this property, but as trustees to attend to the interests of the twelve Companies, and that to them alone they were accountable for the receipts and the expenditure:—)—then I apprehend that I have made out a clear case here, that they are trustees. Then I say, if we make out a clear case of their being trustees, and if your lordships see that they are setting up claims clearly inconsistent with the fact of their being trustees for the Companies; that they have wastefully expended our funds, and that since the suit has commenced they are still doing it,—then I submit that, according to the practice of this Court, your lordships will have no doubt that the plaintiffs are entitled to have their interests protected against trustees who have no property to answer any breach of trust, by taking the money which they admit to be in their hands, and having it paid into this Court, and appointing a Receiver to receive the rents and profits during the time that the litigation may continue; and I hope there may be no difficulty, therefore, in the prayer of this motion being granted.

Mr. WIGRAM.—My Lords, I am in this case with Sir William Follett, and certainly purposed to have addressed myself very shortly to your lordships, after the full statement which he has made; but I am a little embarrassed by an observation made by my learned friend, Mr. Knight, respecting the evidence which he said he should expect to be put in afterwards. Now I am well aware that Sir William Follett, at the time of his address, made a general statement, without either mentioning the documents from which he took the statement, or where he took it from; the answer stating that it came from the answer, and referring only in the one instance required to the passage in the answer upon which he relied: but I am quite prepared now, and it may possibly be the means of saving the time of the Court, if I state to your lordships what documents I consider as put in evidence. Numerous as

they are, having marked them as Sir William Follett went on, to be relied upon in evidence.

The first is the printed articles of 1608. Those were the general propositions first made for all undertakers. The second document referred to, was a document, dated in July, 1609; being the King's instructions to his commissioners to do certain acts in the way of setting out the lands, churches, schools, and so forth. The next document, in point of date, is the 30th of July, 1609, which were the proposals to the City—proposals made directly to the City. Again, in July, 1609, there was the precept referred to by Sir William Follett, which went from the Mayor to the Companies, directing them to appoint four persons from their own body, who were to confer and consider what should be done. Now, if I am desired to read that, to show its language, I will refer to the document.

Mr. KNIGHT.—I do not desire my learned friend to take any trouble that is not necessary.

Mr. W. P. WOOD.—The 1st of July, is not it?

Mr. WIGRAM.—I have not got the date marked.

Mr. KNIGHT.—I consider the opening as inaccurate as well as ineffective.

Mr. WIGRAM.—The next document is of July, 1609; that document comes from the repertory of the City, and by which it appears that in pursuance of different precepts, different committees of the Common Council agreed to meet the Lords of the Council for the purpose of carrying on this affair.

Lord Commissioner PEPYS.—An entry of the fact?

Mr. WIGRAM.—Yes.

Mr. KNIGHT.—That is a document which is admissible on this ground, that you have asked us whether there is such a document, and we state that we know nothing of it.

Mr. JACOB.—Is it mentioned in the bill?

Mr. WIGRAM.—I think not.

Mr. JACOB.—If it is not contained either in the bill or in the answer, they cannot read it.

Mr. WIGRAM.—During this time there was no Irish Society in existence; and I am now giving a detail of the proceedings by documents which come from the records of the City, show-

ing the transactions which took place between the Crown and the City before the Irish Society existed; and I apprehend that nothing can be more clear than that we have a right to bring forward this document merely as a detailed explanation of what took place.

Lord Commissioner PEPYS.—If it is not in your bill you cannot.

Mr. KNIGHT.—One of the documents mentioned by Sir W. Follett about this date was alluded to in the bill, but of which the answer stated ignorance; I believe this is not that document. I thought, when my learned friend began, it was. I now find, and I believe that this is, a document not referred to by the pleadings at all.

Mr. WIGRAM.—If, upon examination, it shall appear that that document is not there, it will go out—it is quite unimportant. There is one document of July 1609, in which there was a precept directing the Companies to report what each man would willingly contribute. Then comes in their Answer.

Mr. KNIGHT.—I do not take any objection to that—"Certain Resolutions taken from the Repertory of the City;" what that means, I do not know.

Mr. WIGRAM.—It is part of the records of the city. The next document is one, I know, relied upon in the Answer: it is the report of the Viewers who had been sent to Ireland to view the property; that is dated the 2d of December 1609. The next is the one that Sir W. Follett read Dec. 2, 1609, which was the Report of the Committee to whom the Report of the Viewers had been referred, recommending the institution of a Company for the purpose of carrying into execution the project which the parties had in view. The next document is one dated the 8th of January 1609, which will also be found in the Answer. It mentions the appointment of the Committee to confer; and shows how the Committee was composed. It is put forward prominently in the Answer, that they were composed of the members of the different Companies. The next document is that of the 28th of January 1609, which is an agreement entered into between the City of London and the Lords of the Council; and which contains the several

articles for the plantation to which your lordships' attention was directed ;—that was the 28th of January 1609. On the 30th of January 1609, comes the proceeding by which the City ordains that there should be a Company for the purpose of carrying into execution that which the City were undertaking with the Crown ;—that was also read by Sir W. Follett. The next document referred to by Sir W. Follett was the charter of James the First, which is dated in the month of April 1613, by which the Company was formed.

Mr. KNIGHT.—The Londonderry charter, and the charter of Coleraine?

Mr. WIGRAM.—Yes. On the 24th of June, 1613, is a document also referred to and set forth in the Answer, by which a deputation was appointed to go to Ireland for the satisfaction of the Companies. Then comes the Report of Smithies and Springham, which I think is dated the 8th of November 1613; by which they reported that the Companies desired a division; and the reason why the fisheries and town lands should not be divided. On the 15th of January 1614, the next date, there appears an entry, in page 40 of the printed book, as follows:—  
“ It appears, by a letter written at this time by the Wardens of the Goldsmiths' Company to their tenants in Ireland, that a dividend of the rents was to be made to the twelve chief Companies.”

My Lords, on the 25th of March, 1615, was the king's letter, by which he complains that the works contracted to be done had not then been done, and peremptorily fixes August, 1616, for the completion of the works; stating, that if they were not then completed, he should feel justified in seizing the property again, for the use of the Crown. The next document in date is one dated in the following month of the 13th of September, 1616, by which the Crown, then, for the first time, granted a license to the Companies, to hold in mortmain, and confirms to the Irish Society all the property which it had derived under this charter from the Crown. Then the next in date was one dated in 1624, which I think is set forth at great length in the Answer, by which the Crown complained at that time that the plantation was not what it ought to be, and

required a great deal to be done; and then there are the Answers of the City to the complaint made by the Crown, in which, offering to do some things, they still insisted that they had done all that they were bound to do; and insisted with regard to what the Crown required, that the Crown were requiring them to do that which under favour the Crown had expressly undertaken to do itself. And in May, 1825, there is a document carrying on a similar sort of correspondence that is in the Answer.

Then, in 1631, there are the proceedings in the Star Chamber, which also come from the records of the City. It is not till 1636, that any other document of importance occurs; and from 1636, downwards, are the petitions to the King, the petition to the Protector, petitions to the House of Commons, and a document amongst the City records, stating, that the king had reported to the prayer of the petition, to re-grant to the City and the Companies that property. The document is immaterial, because the royal assent is implied.

Mr. WOOD.—You state in fol. 197 of your bill, that in “the month of November 1641, his late Majesty King Charles the First, was pleased to declare to said City of London his royal assent to restore the lands and hereditaments:” that is a mere statement, it is not a document.

Mr. WIGRAM.—It is charged in the bill, and I understand it is in their answer. My Lords, in the month of February 1649, and in April 1656, there are two documents referred to by Sir W. Follett; one of them, the last, being a document which is taken from the City document, referring to the former one, dated 30th of April 1650; and it was, “that the City having referred it to a committee to ascertain certain facts, they made a report as to what had taken place regarding the proceedings in the Star Chamber.”

Mr. KNIGHT.—The resolutions of 1650 are of the Court of Aldermen, I think, not of the City at large.

Mr. WIGRAM.—They come from the records to which you refer; we have made out an analysis from the records.

Mr. KNIGHT.—I want to know whether those resolutions are resolutions of the Court of Aldermen, or of the Common Council.

**Sir W. FOLLETT.**—Of the Court of Aldermen.

**Mr. KNIGHT.**—I do not object to receiving it, because you have mentioned it in your bill; and we say that we know nothing of it.

**Mr. WIGRAM.**—Then, in 1676, they begin to make dividends.

**Mr. KNIGHT.**—If you go to any thing in the document, I must have the passage referred to.

**Mr. WIGRAM.**—Then comes a few documents, which are scheduled in the answer of the Irish Society themselves. I mention these particularly, in order to shew what took place between that last document of 1650, which mentioned that the City were mere trustees for the Companies, and their acting upon the principle by paying dividends; but the passage in the answer says distinctly, “that they have always paid dividends, from the time they first began to do so down to the present time.”

**Mr. KNIGHT.**—Will you be so good as to refer to the folio? “It stopped in 1830.”

**Mr. WIGRAM.**—I mean down to 1830. Of course, when the contest began, they ceased to pay dividends.

**Mr. KNIGHT.**—I must trouble you to read the passage. I have a substantial reason for it, or else I would not ask you.

**Mr. WIGRAM.**—In answer to the amended bill, in folio 41, they say, “That many of the books and papers of the Society having been destroyed by fire, and others mutilated, as in said former answer of defendants mentioned, they cannot set forth, as to their belief or otherwise, the amount of the current expenses in the year 1676, or for any of the twenty years subsequent thereto, or in any other year, further or otherwise than as appears by their former answer to the said bill. They believe that in many subsequent years, said Society did accordingly, and year by year, not always immediately, but at the expiration of very short periods after the receipt of them, of the rents and profits of the said ferries, fisheries, and town lands, regularly pay and divide to and amongst said twelve principal Companies, the monies from time to time remaining in the hands of the Society’s Treasurer, being a surplus or balance for meeting the ordinary and current expenses of the

said Society." I merely mention this, to shew that there is no interruption, because the next document in point of dates comes after a large interval. The next document was dated in 1683; and I merely refer to the dividends in order to fill up that interval. My Lords, the next document was dated in 1683, which was an extract from the answer of the Irish Society to the bill filed by the Bishop of Derry against them, at the time when those suits and litigations took place between the see of Derry and the Irish Society as to the extent of the bishop's interest in the fisheries, &c. The next documents in point of date are documents dated in 1690, and downwards to 1696, which were referred to by Sir W. Follett generally, as applications made to the different Companies for contributions towards churches and charities.

Mr. KNIGHT.—Where are they?

Mr. WIGRAM.—They came out of your possession. I can give you the dates of them.

Mr. KNIGHT.—Whatever is in our schedule you have a perfect right to.

Mr. WIGRAM.—My Lords, the next document in point of date was in February, 1713.

Mr. KNIGHT.—I have taken this note,—“Applications made to the different Companies for contributions to charities and churches, admitted in the schedule to the answer, the dates being from 1690 to 1696.”

Sir W. FOLLETT.—The first read is in 1698,—petition by Mr. Walker.

Mr. WIGRAM.—The next is in February, 1713, which was that memorial which was presented by the Irish Society to each of the Companies, admitting that the Irish Society had then no interest in the proportions which belonged to the particular Companies, save and except in the timber, woods, royalties, &c. expressly reserved to the Society in their grants to the Company.

Mr. KNIGHT.—Where is that?

Mr. WIGRAM.—That document comes out of your possession. The next document was that in 1715, which I find in the printed book also, which is the Case and Opinion.

Mr. KNIGHT.—No; the Case is not there. There are the Opinions of Mr. Joy and Sir John Silvester.

Sir W. FOLLETT.—No; that is the other. There are the Opinions of a gentleman of the name of Duncan Dee, and Edward Northey. They are referred to in the schedule to your answer.

Mr. WIGRAM.—In February, 1728, is an application made by the Irish Society to the Skinners' Company for charity; it comes out of your possession. In March, 1729, you send to them again to answer that application; and in April, 1729, there is the answer from the Skinners' Company, consenting to advance the money in the way you suggested. In August, 1729, there is another memorial by the Irish Society to the Companies respecting the timber. My Lords, in the year 1816, is the case which was submitted to the Recorder of the City and Mr. Serjeant Joy, and their Opinions.

Mr. KNIGHT.—You put in the Opinion without the Case.

Mr. WIGRAM.—No.

Mr. KNIGHT.—Then where is the Case?

Mr. WIGRAM.—We have given you notice to produce it.

Mr. KNIGHT.—We have given a schedule upon oath, and all our papers.

Mr. WIGRAM.—I called Sir William Follett's attention to the fact, that in the printed book, in page 148, they state the fact of the opinion being given; and in that same book, in page 149, they state that "the opinions of Mr. Serjeant Joy and the Recorder of London having been taken on the liability of the Society to render accounts to the Common Council," the motion by the City, in pursuance of which they called upon the Irish Society to render an account, had been withdrawn; we put this opinion in, therefore, as a statement by the Irish Society.

Mr. KNIGHT.—I merely asked whether you produce the book, and understand you do not.

Sir W. FOLLETT.—We read the statement in your book.

Mr. WIGRAM.—Then I likewise put in the printed book, "A Concise View of the Origin of the Irish Society," which emanates from themselves, and which contains the documents,



and a great variety of other papers, which have been stated to your lordships.

Mr. KNIGHT.—Am I to understand that that is all your evidence?

Mr. WIGRAM.—I believe that to be all the evidence.

Mr. KNIGHT.—Then I do not understand that you read any passage from the answer, except that extract from the answer of the amended bill at fol. 41.

Mr. WIGRAM.—I read the answer also to verify the accounts.

Mr. KNIGHT.—Then I must have that read.

Mr. WIGRAM.—The defendants, by their answer, say that they have set forth an account of their expenditure during a certain number of years. We have verified copies of the accounts which are so set forth by you.

Mr. KNIGHT.—What do you put in?

Mr. WIGRAM.—The whole of the accounts contained in the schedule. I do not see the use of specifying with the same particularity as upon the hearing of the cause; for this reason, that their answer is open to them to make use of upon the present occasion, which upon the other it would not; and therefore whether we read the passage or not, in the answer it is equally open to them to make use of it.

Mr. KNIGHT.—No doubt it is, if a case is made against us. Then I understand that you put in the whole of the accounts contained in the schedule to the answer. Am I to understand then that you do not read any passage from the answer as distinguished from a document, except that at folio 41 in the answer to the amended bill, which you stated just now? Because, if any passage in the answer is to be relied upon, I must beg you to inform me.

Mr. WIGRAM.—I am afraid I must go through the answer with very great care with a view to that question. If I was now at the hearing of the cause, and if this question was to be decided without their having a right to read any important passage, it would be necessary for us to specify what parts of the answer we read; but I am not aware that Sir William Follett has read a single passage which does not rest upon the documents themselves.

**Mr. KNIGHT.**—Then I understand, that you do not read any passage except the passage at folio 43. We must know upon what parts of the answer you mean to rely: I understand what you say as to documents. But Sir William Follett alluded to certain other things, which I am instructed not to be there in the way in which he stated them.

**Mr. WIGRAM.**—That leaves it as it stands—my case is a case of documents.

**Mr. KNIGHT.**—Then I have nothing more to say.

**Mr. JACOB.**—Therefore, there is no evidence before the Court of any of those allegations, of the Society having in the year 1830 stopped the dividends, or of their having refused the dividends, or disputed the right of the present plaintiffs.

**Mr. KNIGHT.**—Not an approach to it: there is nothing to state what this claim that they set up is.

**Mr. WIGRAM.**—I am at present puzzled to know what the contention is now about.

**Mr. KNIGHT.**—That is, the real contention.

**Mr. JACOB.**—The contention is, who shall state the real case; who shall inform the Court what the issue between the parties is.

**Mr. KNIGHT.**—Then we understand, that the only part of the answer you read is, the part at folio 41, of the answer to the amended bill?

**Mr. WIGRAM.**—This also is evidence, that we extract the items from these accounts, adding together the amount of salaries in England, and surveying expenses, and the incidental expenses, and tavern expenses; all of which, as we contend, or the greater part of them, are such misapplications as entitle us to the order which we ask.

**Mr. KNIGHT.**—I suppose you read from the accounts those parts of them which you understand Sir William Follett stated?

**Mr. WIGRAM.**—Yes; which bring down the dividends to a certain date, and which shew that they were paid no longer. I assure your lordships, that I never heard a contest about an answer, or what part of the answer is to be read.

**Lord Chief Commissioner PEPPYS.**—Either in the body,

or in the schedule to the answer, or in some other document, the plaintiffs' case must be found.

Sir W. FOLLETT.—I understand that the accounts are set forth from the year 1824 to the year 1832. And I understand that there are no dividends paid since 1830; whether it is so, my learned friends, who have looked at the accounts more accurately than I have, can be able to tell.

Mr. KNIGHT.—The last entry in the printed accounts is thus:—"Divided amongst the twelve Companies in 1831, 3,998*l.* 13*s.* 4*d.*" The year after, 1832, the bill of the plaintiffs was filed.

Sir W. FOLLETT.—The statement made to me was, that no dividends were paid since 1830.

Mr. KNIGHT.—I have no doubt of it. Of course you have declined reading evidence, that no subsequent dividends have been paid.

Mr. WIGRAM.—Do you assert that such dividends have been paid?

Mr. KNIGHT.—I am here to answer such case, if any shall be made against me.

Mr. WIGRAM.—I have the printed account, which is headed, "A general Statement of the Monies received on account of the Honourable the Irish Society, being the produce," &c. &c. [*reads the same to the words "to February, 1834."*] Now, under the head of this expenditure, there are the permanent payment of quit rent, not including dividends, &c. &c. [*reading the heads of expenditure.*]

Mr. KNIGHT.—That is after the bill was filed.

Mr. WIGRAM.—Just so. I understood you to say, that there has been a payment of dividends down to the present time.

Mr. KNIGHT.—No: I stated that Sir William Follett had been misinstructed, when he stated that there had been no dividend since 1830; here are printed accounts, stating dividends in 1831 and 1832; the bill was filed, and there is no proof of there being no division before the bill was filed.

Sir W. FOLLETT.—I understand that what my learned friend has before him, are the dividends of 1830, which were brought

into the accounts of 1831 ; but that there have been no dividends since that time.

**Mr. WIGRAM.**—Here is a general statement of the accounts for the year ending the 25th March, 1832. Now, the bill is filed in May 1832 ; and there is not in this account any statement whatever of dividends paid during that year. Does that satisfy you ? because I do not know what it is we are quarrelling about.

**Mr. JACOB.**—Would it not be as well to tell the Court what the real issue is ?

**Lord Commissioner PERYS.**—It is part of the ground of the application, that there has been a suspension of the payment of dividends, and, of course, it must be made out.

**Mr. WIGRAM.**—Then I have an account down to March 1832 ; and in that account there is no payment of dividends during that year.

**Sir W. FOLLETT.**—I did not understand that there was a refusal to pay those dividends ; but I stated that I understood the Irish Society had set up claims of some description which are wholly inconsistent with their holding this property as trustees for those Companies ; that the dividends had been paid down to 1830 ; but, as I understand, not since that time. I do not mean that any application has been made to them for those dividends, because we filed this bill, not for the purpose of having the dividends paid, but for the purpose of the Court declaring what was the relative situation of the parties. According to the statement made to me, I understand it to be this,—the last payment was in March 1830 ; but in the account of the year 1831, the accounts came down to March 1832 ; and in the account of March 1832, there is no dividend for the year 1831. I do not contend that there has been any refusal : the case is not of that kind.

**Mr. KNIGHT.**—Then I ask you to read from the Answer,—or, I ask you for some legitimate evidence according to the practice of this Court, how you make out that there has been any, and if any, what claim, inconsistent with what you considered to be the true character of the right.

**Sir W. FOLLETT.**—When you are speaking to me about the

practice of this Court, I will say, that I understood when I came into this Court, that I had a full right to refer to the pleadings in the cause; and I understand that if my learned friend asks me to pick out of this voluminous Answer the particular passages, it is impossible for me to do it.

Lord Commissioner PEPYS. — What I understood Mr. Knight to ask is perfectly regular; a charge is made that the trustees have repudiated their trust, or that they have abused their trust. That would be a ground for appointing a Receiver.

Mr. WIGRAM. — I am to blame in this, because, upon the statement made to me, I had not the least doubt but that the Society were withholding the dividends.

Sir W. FOLLETT. — There are various passages in the Answer: here is one in folio 506; they say, "As regards the declaration of right sought to be obtained by said bill, defendants have not, and they believe said Corporation of the City of London have not, at any time contested the right of the said Companies, parties to the said bill, to the surplus rents and profits of the hereditaments vested in the said Society, subsequent to the charges to which the same are expressly subjected by the said two charters of King James the First and King Charles the Second." In my statement, I omitted to state that we do not at all dispute those charges:—but then they go on: "And to the discretionary powers vested in the defendants for the due execution of the charitable and public purpose provided for by said charters, and the original articles and proposals on which such charters were founded; but defendants say, save as regards such surplus only, that they are trustees for the said Companies, or any of them." That is one passage. What I said at the outset is this: that they claim a right inconsistent with being trustees for the Companies; they claim a right to exercise a discretion over the distribution of the funds; they claim a right themselves to expend this fund according to their own discretion; and they claim the right of accounting to the Companies, if they account at all, only for the surplus, after they have exercised a discretion in the distribution of the fund; and therefore I say, that they set

up a right wholly inconsistent with their character as trustees.

Mr. WIGRAM.—There is another passage in which, after stating that they have withheld the dividends, they submit whether they are not entitled to do so. I had not any conception that there was a dispute, because that seems to be the point now.

Mr. KNIGHT.—I consider that the case has been opened with as much ability as I ever heard a case opened; that ability being directed to this object, that the Court should know nothing of the real point in the case.

Mr. WIGRAM.—The passage is this. They say “they submit to the judgment of the Court, whether or not, by the means and under the circumstances aforesaid or otherwise howsoever, the Irish Society became trustees of the lands and hereditaments comprised in the charter of King James I.” &c. &c. [*reading an extract.*] But there is a passage in which we submit whether they have been justified in making the dividends they have done. As I said before, I was not aware that there was any contest between us, as to whether the Irish Society contested the rights of the Companies as to the property in question.

My Lords, after the lengthened discussion this case has already taken, the Court being in possession of the documents, it is not my intention to occupy the Court by going into any length of argument upon the case. The first point that struck me in reading this case, where I find the Irish Society making a claim to a discretionary power to apply these funds as they please, was this,—How it was possible that any such statement could be made in a court of justice at all. Are they accountable to no one? With respect to their right to apply it in the payment of specific charges in the charter, so far as I know, there are at this moment but two such charges, one for the payment of a sum to the Governor of Culmore castle, and another for the payment of a sum to the Bishop of Derry; which sum to the Governor of Culmore was not at first ascertained specifically, but was afterwards fixed by act of parliament; and with respect to the Bishop of Derry, there

having been a contest between the Irish Society and the Bishop of Derry, as to the right to a portion of the fisheries, that payment was also fixed at a permanent amount; and I say I never could understand, and I cannot understand now, how any one can argue that a property of this nature can exist at all. Are they trustees, or are they not trustees? If they are trustees, I ask, what is meant by trustees having a general power to apply funds at their discretion? If that is not absolute ownership, I do not know what absolute ownership is. But I am not driven to that, because it is enough for me to point to the expenditure that has taken place, and to say that the discretionary power they contend for, unless it be absolute ownership, is one that cannot be countenanced for a moment in a court of law. I allude to the sums of money which have from time to time been expended by them in a manner that nothing can justify.

But this same statement of discretionary power is coupled with an obligation to do some acts of a particular kind. Now, I ask, how it is possible to maintain that position, regard being had to their origin, and to the origin of the interest of the Companies in the property? Who is between the Crown which granted this property on the one side, and the City on the other? The Irish Society, the City, and the Companies, are completely identified. Those three were undertakers, that is, they were one undertaker. Now, the grants of the Crown to the undertakers were not confined to grants to the Corporation of that City, or to the Companies of the City, or to the Irish Society, but to a number of individuals. Is it meant to be said, that any person who obtains land from the Crown as an undertaker, is a trustee now, in any sense of the word, or bound to apply the rents or profits in any other way than as an absolute owner of the property? Let me take any individual who holds property now, derived under the undertakers. Is any one of them a trustee for any one but himself? If not a trustee for any body but himself, how do they distinguish the Irish Society, the City, and the Companies of the City as blended together? I am perhaps wrong in going into this discussion now; but I am at a loss to know how this

proposition can be made. I cannot understand how it could be gravely argued, that when the king granted a particular portion of land to any individual, binding him to the performance of certain things, and when the planter has performed the conditions, that he is any thing but absolute owner of the property. When the Crown makes a plantation, it does not grant it to A B, without knowing that A B, has the means of making the plantation; and when the condition is performed, the party becomes to all intents and purposes absolute owner.

My Lords, if any argument were wanting to confirm this, I would refer your lordships to the original printed articles, taken in connexion with the instructions given to the Commissioners, and with the agreement subsequently entered into between the Crown and the City; in which you will find the Crown throughout undertaking to grant to the City those lands, and undertaking further, in express terms, that an act of parliament shall be passed to give full effect to the rights of the parties: throughout the whole of these documents, there is one consistent tenour pursued on the part of the Crown, by way of security to itself; and what is that?—a proviso defeating the estate if certain things are not done, or a bond and covenant providing that certain things shall be done. Then the Crown meant, of course, to put the party in possession, to see specified acts done, which would have the effect of launching the plantation; and then it was left to natural courses to work out, in the usual way, the good which the Crown meant to accomplish. My Lords, I assume, therefore, that there really is nothing upon which it is to be *prima facie* taken for granted that the City, represented by the Irish Society, or the Companies represented by both, or taking the three blended together, stand in a different situation from any other undertaker. I must assume that the Companies are now as absolute owners of the property as any gentleman in the north of Ireland is.

But, my Lords, the way in which I desire to present this case to your lordships, is this:—I begin by shewing the original proposals, which have nothing that militates against the



absolute right of property for which I contend. On the contrary, all reason and analogy, and every thing whatever, runs in the same channel. Then what takes place? A Society, at the instance of the City, is appointed to carry into effect the said works. What works? That which the City had contracted to do with the Crown. The City comes to make specific terms with the Crown on a certain date in the year 1609. Is the Irish Society mentioned at all there? Does the Irish Society say, We have a lien upon the rents and profits, for any purpose whatever? Nothing of the kind; but the Crown agrees, upon the 28th of January, that an act of parliament shall, if required, be passed to give effect to that agreement. What then is uncertain? Time certain; amount of money certain; works specified certain; and nothing stipulated on the part of the Crown, except that they shall do the acts within a certain time. After this contract is completed, after the right of the Crown is bound by the agreement, then, and not till then, the Society are appointed to act to carry it into effect. Up to that time there was no Irish Society. The Irish Society is to be considered an emanation from the City. They are a Society which the City appointed. Now, having once launched the case in this position; finding that the twelve Companies, who subscribe every shilling of the money, are at a certain day put into possession of all such parts of the lands as were divisible in their nature, and that they have ever since held them to their own use, without any claim on the part of the Irish Society to participate in the profits of those lands for any purpose whatever; finding not merely absence of a claim, but that their right is, in point of fact, clearly acknowledged by the Irish Society:—then, my Lords, I follow this up by written admissions of the parties themselves, who now make this claim—what I call a claim, because I say that the denial of our absolute right to the ferry and fisheries and town lands is a claim; and it is coupled with the fact, that the Society did make over to the Companies every portion of land that was divisible, and that they retained the other solely because it was not convenient to divide them; but it is coupled also with this fact, that still the Companies of the City were to

participate in it the same as in the other. The Irish Society had then no power to raise a single farthing of money; and I challenge any one to shew me that they had power to raise one single shilling of the 40,000*l.* that was expended. The original Company had a power given to them by the Corporation of the City, to direct the expenditure of such sums of money as the City should raise and place at their disposal; but where is there any power for them to raise money? Then, I ask, how can it be gravely argued that any thing of this kind existed?

My Lords, you have a note of several out of the numerous documents, in which in writing, both the City and the Irish Society in terms describe themselves as trustees for the Companies of the City of London. Your lordships had that referred to as taking place in a number of instances. Now the only observation that arises with respect to these documents, as it appears to me, is this: that some of them come out of the possession of the Irish Society; and some of them, which come from the City, came out of their possession during that interval when the existence of the Irish Society was suspended. I allude particularly to the petitions to the Crown, and the various other proceedings which took place previously to the renewal of the charter. They took place during their suspension; the Irish Society being a mere emanation from the City. Your lordships have, therefore, beginning from the earliest time, down so late as the year 1816, statements in writing, first in the form of document, sending over persons to view the property in Ireland for the satisfaction of the Companies. You have an answer in Chancery expressly disclaiming all immediate interest, upon the ground that they are trustees; you have statements of Cases for the opinions of counsel, repudiating that they have any interest. You have the Memorial respecting the timber, speaking of that as property for which they are interested for the Companies, because they ask for the timber to which particular Companies had a title, for the purpose of more beneficially carrying on the fisheries. I say that there is, therefore, an uniform admission of our rights as *cestui que* trusts; and if once admitted to be

*cestui que* trusts, I say all question of expenditure is gone. The Irish Society are either owners in their own right or trustees for the owners. As to the Crown being a party to the appointment of the Irish Society, the whole was done behind the back of the Crown. The Crown took a totally different security, and no question ever arose till the time that has been mentioned.

But it might be said that there has been an uniform course of acting in opposition to the documents. How does that stand? Look at the payment of the dividends down to the present time. I put that as a second point, which, even if the documents had been destroyed, would have left us with conclusive evidence that this body was a trustee for the several Companies. Now I put the case in that way for this reason: I have to establish two things,—trust, and breach of trust; and if I establish those two, I should, I humbly conceive, be entitled to say, that you will have the money now in the hands of the trustees brought into Court, and also have a Receiver appointed; and I add to this the further fact, that the Irish Society have no existence except as a chartered Company for us, and therefore we have no security for the funds in their hands. Therefore the protection of the Court is essential to our security, from the nature of the case.

Then, I say, the onus is upon them to make out a case as strong as I have made, to shew that they are not upon these documents what they pretend to be. Suppose we were here upon the case of an individual. Suppose an agent had made the repeated admissions that they have made here, could he be heard afterwards, upon a motion for a Receiver, to say,—True it is, I have from the beginning admitted a case which shews that I was your agent, originally appointed for the purpose of carrying on this trust; I have admitted, from time to time, that I was your trustee; I have paid to you, again and again, what I allege to be the surplus of the rents and profits, after the current expenses of management; but I now set up a title to do something against you, which I never before claimed to do.

My Lords, the only reason why I look deeper than the

documents and the payment of the dividends is this, to see whether I can find any thing to warrant the case now set up against the Companies. I have taken the trouble to go through various statements contained in what is called the "Concise View of the Irish Society." I have looked into this book, to see whether I could find in this book,—whether I could find beneath the surface of this plain admission,—any continued series of acts done by the Irish Society, which could lead to the supposition that they did possess the power which they claim. Now, upon looking through this book, and adverting to the fact that they were incorporated in the year 1613, it is not till the year 1687 I find any assertion on their part of a right to apply money for general purposes of charity; and in that year, 1687, I find the payment of a sum of 10*l.* to one Joseph Bennett. My Lords, in the year 1739, which is the next statement in their own book of their expenditure, in page 113, I find 10*l.* given to the poor of Derry. Now, taking the date of 1613 down to the year 1739, we have passed over more than a century without there being any voluntary contribution for the purpose of general charity.

Now it certainly is somewhat singular, regard being had to the claim which is now made, that in the year 1742, in page 117 of their book, I find this extraordinary entry;—I mean, extraordinary with regard to the position in which we now stand:—"an inquiry was directed to be made whether the Society had the power of making general benevolent contributions." Am I not then justified in saying that this is a most extraordinary position for any party to place himself in? That having been incorporated in 1613, a whole century should elapse with the sum of only 110*l.* given away in the manner I have mentioned? In the year 1742, being 135 years after their incorporation, there is actually recorded a doubt whether they had the power to give money for the purposes of general contribution or not. My Lords, whatever doubt might be raised as to the power of the Company, can there be any doubt whether the Company knew its own power originally? and the further we go back the clearer the case

becomes. Yet a whole century elapses with only 10*l.* given to a man of the name of Bennett, who is represented as having made his way through King James's army to the town of Derry; and yet upon this record a doubt is expressed whether they had the power to do it. My Lords, that doubt is invaluable, to shew what the state of the case was; because the doubt must be founded upon an existing knowledge that the thing had not been done before; and yet, as I understand their case, they mean now gravely to argue, that if in the exercise of their discretion they think proper to give every single shilling of the 10,000*l.* a year which they derive, they have as clear a right to give that, as they had to give the 10*l.* in question: at the same time they would have had no right to give that 10*l.* if we had disputed it; but, as I said before, there never has been a contest as to any money which has been expended. I have extracted also the other monies expended for benevolent purposes; and I assure your lordships that, taking it as accurately as I can, the whole expenditure from the year 1613 down to the year 1819, being more than two centuries, for donations and charitable contributions, is only 970*l.* What they have done since 1819 I will come to presently.

Mr. KNIGHT.—Do you include public works?

Mr. WIGRAM.—No. I have said donations and charities.

Mr. JACOB.—And schools?

Mr. WIGRAM.—You shall have the schools also. My Lords, with respect to expenditure upon churches, if ever an obligation existed to expend money on churches, although I am aware of none, because all the parishes were to be set out by the commissioners in the beginning,—the first entry is in the year 1771: 1613 is the date of the incorporation, and in 1771 we find a sum of 300*l.* is given for the repairs of Coleraine church. In 1792 there is another sum of 300*l.* for rebuilding a church at Ballykelly; and I believe that in the course of two centuries that is the only sum for this purpose. I mention this to shew not only how long a time elapsed before they asserted the right, but I mention it to shew that the paucity of such instances is quite sufficient to exclude the idea

that they possessed a right, and to shew that that which they call usage has been nothing but a gradual growing usurpation.

Your lordships will recollect that, by the terms of the agreement, certain buildings were to be erected in the town of Derry. In the year 1622, there is an entry for building the town-house of Derry. From that time to 1730, there is no money for public buildings. In 1730, it appears that 500*l.* was expended to build a stone bridge at Coleraine. Now let us observe what the effect of all this expenditure is. The City of London have an interest in the ferries, fisheries, and town lands, and all the property in and about Derry. How can you infer from the fact of 5,000*l.* being expended at Coleraine, that that is made otherwise than in the due course of management, and for the benefit of those whose trustees the Irish Society are? I believe Sir William Follett stated, that when King James, in the year 1613, asked them to build a bridge, their answer was—"under favour, this is to be done by His Majesty, at his expense;"—but in point of fact, they found it for their benefit to build a bridge. Now, if my trustee or manager thinks it for my benefit to build a bridge, is it to be said that that is to be taken as evidence that he has a general power to expend as much as he thinks fit? because it either proves that or it proves nothing. I do not know, if they were our trustees, how our consent to their spending money in building any number of public buildings could be evidence of our having any thing less than the right which we claim.

My Lords, in the year 1734, 200*l.* was paid towards erecting a market-house in Coleraine. In 1741, 700*l.* was given towards erecting the market-house in Coleraine; and then comes the last which is mentioned, which is 2,050*l.* towards building Coleraine bridge,—that is in 1745. When I speak of acts of expenditure, your lordships will understand me rightly. I am not speaking now of the application of timber to any purposes; I am speaking of sums of money which, having had in their hands, they have thought it right to apply in this way. Now, in the year 1692, that being eighty years after their institution, they determined to give 20*l.* a-year to the master of Derry free-school. In 1740, is the next entry I find

of a school established at Coleraine, the master 20*l.* a-year. In 1742, there is 10*l.* given to the Londonderry schoolmaster. In 1814, there is 50*l.* given to a schoolmaster at Muff. And in 1815, there is an entry of the charity school at Derry, and the Presbyterian school. These, I believe, are the only cases in which they have given money for the purposes of schools; and these were, as I conceive, given with our sanction, because we permitted them to make those few expenditures,—five for public buildings, two for charities, five for schools, and a sum under 1,000*l.* given for the purposes of general charity. And as far as I can discover, upon this amount of expenditure it must be, if at all, that they call upon your lordships to infer, that they had from the beginning a general right to expend money at their discretion. In fol. 202 of the Irish Society's Answer, they speak of it in their Answer as being a voluntary contribution from them, that is, from the Common Council. I cannot conceive how it can be argued that because the City or the Companies did not complain of the money being expended in public buildings, in towns in which they had a large pecuniary interest; how it can be argued that because they did not quarrel with their trustee for that expenditure,—therefore it is to be inferred that their agents had power to do it whether they pleased or not. If it could be argued that they had from the beginning done this, and that we had been disputing the right, it would be a very different thing. But when I find that they built the town-house of Derry, in which we had so vast an interest,—when I find that they built a bridge at Coleraine, which ought to have been built by the Crown,—and that they built another bridge which ought to have been built by the Crown;—when I find that those sums of money have been spent for the benefit of our property, I can find no ground upon which to found any such claim; and yet this is what lies below the surface of the case. These are all the acts that I can find of expenditure of money upon which they can found any claim whatever.

But, it appears to me, your lordships will not, in looking at this case, be wholly uninfluenced by what in an ordinary case I

should call the conduct of the parties. I have called your lordships' attention to the fact, that in the year 1742, the Irish Society themselves expressed a doubt whether they had power to expend money in charity at all. It appears from the same book, in the year 1709, that an application had been made to them to further an object then laid before them by some of the inhabitants in Ireland, to establish a linen manufactory ; and I find this entry—" The Corporation of Coleraine solicited the Society to encourage the establishment of linen manufacture in that town, as a means of increasing the trade and prosperity thereof ; but the Society doubted whether such an undertaking was practicable and consistent with the constitution of the Society to encourage." In 1709, therefore, they doubt whether they had power to encourage the institution of a trade consistently with their constitution. In 1742, they doubt whether they had power to give any voluntary contributions for the purposes of charity ; and yet, after two centuries from their incorporation, we are told that they have an absolute power to spend money as they please. Now your lordships will recollect, that the encouragement of trade was one main object of the institution ; and yet they doubted whether they had power to expend money for that purpose. My Lords, the City, which appear desirous to have a handle in the present argument,—the City have from the beginning disclaimed all interest, by saying—we contributed nothing, but the Companies contributed all ; the City applied to the Irish Society to render account to them. What is the answer they made ? We cannot render these accounts to you—and why ? Because we are accountable to somebody else, and to somebody else to your exclusion.—Then we call upon them to account to us ; and they tell us they are not accountable to us, because they say we have a right to spend money as we please. My Lords, divest the body of their corporate character, and let me suppose that individuals were before the Court ; is it possible that the Court would not say, How is it you can now be heard to assert that you are not accountable to the Companies, and that you call upon the City to help you in the contest ? The very party to whom you refused to account, (because you were accountable to us as our trustees,) you now call in to aid



you in warding off your accountability to your trust. I mention that, as a fact upon which your lordships will lay some stress, when you come to see the history of the proceedings of the Society.

My Lords, I wish I could present it to your lordships' eyes in the way in which it appears to my own; because, in my view, the appearance of the accounts is most remarkable. I began by marking with the letter A the various acts which they have done for the first time, for the purpose of showing what acts they have done from time to time, which were in accordance with the right which they now insist upon—giving money away against our wishes. The first thing they do, which appears to be the first thing done after the incorporation of the Society, was in the year 1682, which I find in page 70 of their book; in which their resolution is, that the members of the Society shall be paid for their attendances. The next is in 1689, the 10*l.* to Bennett; and I do not find any other sum expended in a way which can be construed into expenditure made, except for a charitable purpose. I am now referring to those expenditures which I conceive we should be justified in quarrelling with; as, for instance, their paying themselves for attendances. In 1703, is an entry of a dinner to the Lord Lieutenant. Now, a trifle of this kind I should not notice, were it not for this purpose: that it shows that there has been something like minuteness in the entries which they have made of various acts of this kind. There is an entry in page 81, 1703, of a dinner to the Lord Lieutenant, which cost them 23*4l.* 17*s.* 6*d.*

MR. JACOB.—The first dinner is on the opposite page, in 1696, to the Lord Chancellor and Justices of Ireland.

MR. WIGRAM.—Your lordships will find that they tried very hard to induce one Justice Singleton to accept of a piece of plate, but he refused it very strenuously, and at last they were obliged to give it to the Lord Mayor. Another instance is in 1735, which is money paid for taking the portrait of Mr. Brace, who was the secretary to the Society. Now, perhaps all the sums expended in taking portraits, and in pieces of plate, may not be overwhelming in amount; but we have charges of thou-

sands of pounds for law expenses, and we have charges of thousands of pounds for dinner expenses, and other things of the same description, making altogether a deduction of 5,000*l.* out of 10,000*l.* a-year. And, therefore, when complaint is made of this expenditure, it is incumbent upon me to go through it, for the purpose of shewing how frequent this expenditure became after the lapse of a century from the time of the incorporation. Then the accounts stand thus:—in 1735, there is Brace's picture; in 1737, there is the Governor's (Alderman Barber's) portrait; in 1739, there is a piece of plate to Alderman Leckey; in 1740, a piece of plate to Chief Justice Singleton; and in 1740, there is a record of the Chief Justice having refused this, and the Lord Mayor having accepted it. Now it is remarkable, that it was in the year 1742, immediately after they had begun to have the portraits, and to buy the pieces of plate for their members, an inquiry was made, whether the Society had power to give away the money voluntarily. Just after, or rather I should say, not after; I should rather say that I do not think it at all wonderful, that when they had suddenly begun to spend money in taking portraits and pieces of plate, that there should be some member getting up and saying, Is this right? It proves that some one was struck with the extraordinary fact of their having begun to spend money in this manner: and I find no entry down from 1741 to 1763, of any thing of the kind appearing again; when a generation having passed away, and there being, I suppose, some members who were not aware of what had taken place before they thought they might revive the ancient practice.—But, between 1742 and 1763 there is, in the year 1748, an entry to this effect:—"that they do not think themselves warranted in making grants of money for a meeting-house, which they had been asked to do, but they afterwards agree to give 50*l.* towards it." Then, in the year 1767, we find the Governor sitting for his portrait at the expense of the Company; and in 1787 comes the portrait of the Governor again. Then comes, in the year 1794, the Governor's portrait; and the things run on in this singular order:—In 1797 is a gift of 100*l.* to the poor; 1798, the Governor's portrait; in 1801, 50*l.* to the poor. Then the next is a bit of plate to the Secretary. Then in 1803, plate to

the Governor; 1805, plate to Mr. Beresford; and 1810, plate for the Derry Races. Then comes the appointment of a deputation, who went to Ireland to see into the state of the property. In 1815, there is a vote of a piece of plate to Mr. Saunders; and in the same year there is a vote of a piece of plate to all the deputation. My Lords, this is continued:—in the same year, 1815, a piece of plate voted to the law agent. Then comes, in 1816, a Case and Opinion. In 1817, the Governor's portrait. In 1818, a subscription of 50*l.* to a monument to General Ponsonby. Then comes another deputation in 1819; and in 1819 again, there is the vote of a piece of plate to the members of the deputation.

My Lords,—that ends the statement of their transactions in their printed book, shewing the minuteness with which they state them; and then follows an extraordinary claim (page 188 of the book), saying, that although up to that time they had done nothing but receive the rents and profits of the ferries, fisheries, and town lands, yet, in point of fact, they claimed a right to tax the very lands in the hands of the Companies, to make them contribute to such objects as they, in the exercise of their discretion, should think proper to direct. Now it is perfectly clear, that this would be a claim to interfere with the lands, which are in our possession, which is suggested here.—All that I believe they now claim is, to interfere with that which, as things stand, must come into their hands before they are handed over to us; but I ask where you find this power, which, when it was first exercised, was questioned among themselves, and which was then dropped, and it began again till not a year passes without some entry of the kind? I ask, whether this is a case in which the Companies would have done their duty to those whom they represent, if they had not stepped forward? The amount of the plate, the amount of the portraits, is not the question; but it is the repetition of it, coupled with that extraordinary claim at the end of the documents. They say, Here is a printed account of our expenditure; we spend it in plate, in tavern expenses, in portraits, and we spend it as we please; and we assert our right to spend it in what we please; and we assert our right to tax

your lands for the payment of those expenses. Can it be said that we have stepped forward too soon—and to say, What you admit you have done is, according to your own admission, inconsistent with our rights? We see in your conduct a gradual increase of an unlawful power: we find that is clinched at the end by this claim on your part, and now that question must be settled. It was with that view that we caused that paper to be made out to which your lordships' attention was called by Sir W. Follett, in which paper we set out the various modes of expenses. If the salaries are proper, let them be paid. No one doubts that the Irish Society must be indemnified as to lawful expenditure.

My Lords, the Irish Society has no property of its own; and therefore any account from them of by-gone rents and expenses would be, in fact, a dead letter. The question is, whether, if they assert that they have this right, whether we have not a right to come to the Court with this motion; for since this bill was filed, an answer to the amended bill has been put in; and that answer continues the same state of circumstances, both as to the claim, and as to the accounts, which existed before. But I say, with regard to the law expenses, if they are necessary, let them be paid; if the management be good, let it be paid for; if a deputation must go at the enormous expense of three or four thousand pounds, let it go, but the expense must be justified; if three or four thousands must be spent in tavern expenses, be it so, but the expense must be justified. But if they are right in their claim, it is a gift on their part, and not a right in us. If they are wrong in the payment of these tavern expenses, these portraits, these gratuities, then it becomes most important; and if a breach of trust be proved, then I am simply here upon a common application to say that the breach of trust shall not be continued.

With respect to the two questions of trust and breach of trust, there is but one, because, if there be a trust, the breach of trust is indisputable. I am not here arguing to prove the breach of trust, I have only to prove the trust; and if they admit the trust, I defy any counsel to get up and shew that

there has been no breach of trust. The question, therefore, is but one,—Is there a trust or not? And that is the point which your lordships must here decide, bearing in mind also that we are receiving so small a sum because of this expenditure, which exhausts half the property, solely, as we say, to pay expenses, by far the greater part of which ought not to be incurred. I am sorry I have occupied your lordships to the great length I have done, considering how fully it was gone into by my learned friend, Sir W. Follett; but my case is this,—that you must look at it in this way,—that the Court must say that there is indisputably a breach of trust. I mean to say you have nothing to try, at least, substantially as regards us. The onus is on the other party. As if a person should say in his answer, I admit that I was a trustee in the beginning, but I maintain that I have acquired a subsequent right; with that admission upon the answer, whose case is to be tried? The admission puts me in Court, and upon the other side is the onus of proving that they have a right which defeats my *prima facie* right. They must prove that as clearly and incontestably as mine is proved. I submit to your lordships, that so far from proving that as clearly, they prove no case at all; for there is no single act of expenditure inconsistent with our having an interest in the property. The true way of stating the case is this,—that the Irish Society have, by every covert act, admitted that they were trustees; and they seek now, by means of some covert acts done by themselves, to make out that they were under a mistake from the beginning; but these covert acts were trifling in amount till of late years.

Now, with regard to Sir C. Wetherell, who considered that he was entitled to be heard upon this occasion, I can say that it was most advisably that notice of motion was not served upon the City here, because the claim which the City make in one character is that of representing the Bakers' Company of the City of London; but with regard to the case which I understand Sir C. Wetherell to represent by his calling out, "What city did that?" he means to represent that the City of London, not the Bakers' Company, are the parties to the contest in question. I say, look at the answer of the Irish

Society, with whom we are contesting; We are acting in unison with the City of London. See whether they represent a case which shews that the City has an existing interest at all; but when I find that the very documents which the Irish Society set out are documents in which the City disclaim all interest; and when I find that the City of London was not a contributor of one single shilling of the expense; when I find that they have never, since the charter of Charles was granted to the Irish Society, in any way acted in a manner shewing that they had an interest in the property, by virtue of the original part they took in the transaction; when I find, that in 1717, the Irish Society refused to account to them upon the very ground that they had no interest in the question, and that the only parties to whom they were accounting were the Companies,—I say, that in trying a question between me and the Irish Society, I will not assume, till the contrary is shewn, that the City of London have any interest in the question. My Lords, in that way the case stands; the Companies undertake to contribute; the twelve Companies could not conveniently act for themselves, and the City act for them; they make the arrangements for spending the money; the money is spent; the Companies are put into possession, and they never make a single claim till the year 1817.

Sir C. WETHERELL.—That is not correct.

Mr. WIGRAM.—I can only say, that if your lordships think fit that the City should be served, the City must be served; but, as counsel, I never would sanction serving a party at the instance of the Skinners' Company, without the order of the Court; for you will see that the adding a party to the motion is adding a most enormous expense and burthen. That is no sufficient reason for not doing it, if it is right that it should be done; but I look at the Answer of the Irish Society to see if there is any ground. So far from it, I see that their whole case is a total non-action till 1817; and then, in 1817, the Irish Society tell them that they have no right at all. I say that the Irish Society have no right to call upon me to serve the City with notice, attending first of all to the repeated disclaimer of the City, and to the fact of the Irish Society repudiating the

right of the City to interfere, till the time came when we called upon them to account, and then they tried to embarrass us by saying that the City ought to interfere. In the exercise of my discretion as counsel, I thought it right to say that in the face of that disclaimer I was not bound to make them a party.

My Lords, I must leave the case, with these observations, in your lordships' hands. If my learned friends, on the other side, can produce any other evidence, which we have not laid before you, to raise the question against their admission, that evidence will be wholly a surprise upon me; but I can find nothing throughout these documents which does not show that the Irish Society has been duly constituted from the beginning, in the manner which the charter requires; no evidence whatever that the Irish Society has been other than what the Crown made it,—and what the Crown made it was a corporate body: that is to say, the Crown converted our private agent into a corporate body, because it was essential that there should be some body emanating from the City to control the two corporations of Derry and Coleraine.

Lord Commissioner PEPPYS.—Have you served the other Companies?

Mr. WIGRAM.—No; we have their Answer here, making their claim in accordance with us; we could not under an expense of 2,000*l.* bring them here; but we have here Answers showing that they are concurring parties with us in the motion.

Mr. KNIGHT.—I think it right to say that my suggestion, which I made at the outset of this, was in consequence of the duty which I felt to exist between me, as counsel, and the Court. Having said that, I have discharged myself from it, because the wishes and feelings of my clients are to take no objection of that sort, but to meet the motion upon its merits, and to discuss every point that they have brought forward; not, however, admitting that this is a case which, in any view of it, the Court can dispose of upon motion, even if it had all the parties here.

Lord Commissioner PEPPYS.—These several parties are tenants in common of an undivided property.

**Mr. KNIGHT.**—I do not make the objection.

**Lord Commissioner PEPYS.**—There are twelve Companies, there are 11-12ths not represented; the object of the application is to remove or supersede those who have acted as trustees, and to take away the property with respect to 11-12ths of the interest in which we have not got the parties before us.

**Mr. WIGRAM.**—The way in which I meant to put that point to the Court is this;—that we first looked to see how, in point of fact, these parties represent the case. They all represent the case in the way in which I mention, not one of them conflicting with us.

**Mr. KNIGHT.**—Where are their Answers?

**Mr. WIGRAM.**—We have them here.

**Mr. KNIGHT.**—However I do not take the objection. I know very well that the time of the Court would be wasted; but for the parties I represent, I am here anxious to meet every statement, particularly as the statement on one side has been made; because I have the means of answering every statement that has been made.

**Mr. WIGRAM.**—The question would be, whether under any circumstances it is indispensable that these parties should be served.

**Lord Commissioner PEPYS.**—Can you give me any instance of the Court entertaining a motion for a Receiver as against a trustee, who is trustee for all, without the presence of the other parties?

**Mr. WIGRAM.**—Suppose the trustee objects, and that is the strongest way of putting the case against me; if the objection comes from the Court, I apprehend that the case is then diminished in point of difficulty, because the trustee makes no objection:—but suppose the trustee himself to make the objection, the trustee says,—“Bring the other parties here.” Now, for the purpose of trying whether the Court will say we cannot proceed, your lordships will allow me to assume, that the trustee admits that he has been guilty of a breach of trust, and that the property is unsafe;—then, in what position does put us? He says this motion shall not proceed, unless you bring before the Court all the parties who are in the same



position with you. Now, I certainly have known the objection taken in a motion for a Receiver, of a person interested in the property not being a party to the suit, but the Court has said the property is not safe in their hands ; and the Court has appointed a Receiver, seeing that no harm can possibly be done by protecting the property in the interval. If this motion is granted, the Companies themselves cannot get the money. It is safe in Court, equally accessible to the other Companies. But submitting that the trustee cannot himself take the objection, if there is a breach of trust, the case I make here is one of a special nature ; the effect of your lordships allowing such an objection, would be to paralyze this suit, and make it impossible to prosecute it. Take the ordinary case of a suit of such magnitude as this, and suppose individuals, and not corporate bodies, to be the other defendants, we could not under an expense of 1,500*l.* bring the other parties before the Court. But that is a small part of the difficulty in this cause, because the parties, forty-eight in number, that is to say, the principal and the minor Companies, are all corporate bodies. Now, we might in a common case go to an individual, and say, " Give us your consent to appear for a certain number of other persons." An individual might do so ; but in the case of these societies, every society has its separate solicitor ;—they cannot act except by convening meetings to take these things into consideration, and that is the reason why you have one party here and not more. There must, therefore, be meetings of all these Companies ; there must be resolutions to put it out of the hands of their own solicitor ; and all this will occur in every case in which we come to the Court to take a step in the course of these proceedings. Now, you lordships know, that where parties are so numerous as that, it would amount to a denial of justice that the Court should require all the parties to be actual parties : the Court will dispense with their being parties to the record, although when the cause comes to a hearing, the Court actually binds their rights. All that the Court looks to, is to see that they have upon the record an interest similar to that of the acting parties.

Lord Commissioner PEPYS.—Is that the case upon your

bill, that the Skinners' Company sue on behalf of all the rest ?

Sir C. WETHERELL.—Some of the Companies have objected to join:—the Ironmongers' have objected. Seven out of the twelve do not join in the suit.

Mr. WIGRAM.—They all put in their Answers, and make the same claim. If any one set up an adverse claim, of course it would be contested; but where the parties all concur in the same claim as the plaintiffs make, and when the Court is called upon to make an order, which, in point of fact, binds no right, (for those parties will all be heard when the cause comes on to be heard,) the Court will not impose upon us the obligation to do that which would be a positive denial of justice; because, to say that in this motion there must be an expense of 2,000*l.* incurred, appears to me to be a denial of justice. In point of fact, if we should fail in our application, the other Companies are only in the position in which we should be if we had not made the motion. If we succeed in the motion, we then take the funds out of the hands of the defaulting trustee, and place it in the hands of the Court. Whether, therefore, you suppose the motion to succeed, or to fail, I apprehend that we are duly prosecuting their rights, if you will assume that we have made out a case against the Irish Society, both of trust and a breach of trust;—if your lordships order that those parties must all be served, it will entail such an expense as to make it impossible to prosecute the suit. I trust, therefore, that upon our satisfying you that the Answers are as I have stated, you will consider that this is sufficient. We merely apply to have the money paid into Court.

Lord Commissioner PERYS.—I think it will be better to hear the other side before I dispose of this; for this reason:—because, in one view of the case, it would be an useless expense to bring the other party here; but I cannot see my way to making any order without having the parties here. I cannot take possession of the property belonging to twelve parties at the application of one. The mere expense of a Receiver is one upon which the other party are entitled to be

heard. If all the other parties are to be heard now, of course it will create a great expense ; but, in the view I take of this case, it appears necessary.

Mr. KNIGHT.—On the part of the Irish Society, I have, my Lords, to tender you my humble thanks for giving them an opportunity of being heard.

Mr. LLOYD.—Will your lordship allow me to read these passages of the Answer ?

Lord Commissioner PEPYS.—I cannot read the Answer of a party in his absence. The Answer is not put in with a view to an application to a Receiver ; but, Mr. Knight, you do not make the objection.

Mr. KNIGHT.—No. The Irish Society are most anxious to be heard.

Lord Commissioner PEPYS.—I will hear the motion through, before we come to any final decision upon the question of the parties. They are all parties to the cause.

Mr. KNIGHT.—It is fit that your lordships should know, that neither the Attorney General for England or Ireland is a party. The observation may be irrelevant, but it is fit that you should know it ; but I do not make any objection.

Sir W. FOLLETT.—In our view of the case it must be wholly immaterial. I will just point out the passages in the Answer. In folio 343 to 366, they state, they doubt whether they ought to have paid the surplus to the Companies.

Mr. KNIGHT.—That is twenty folios opened, if I may say so, *sub silentio*.

Sir W. FOLLETT. — There is another at page 47 of the Answer to the amended bill. Then, as to their claim being inconsistent with their character as trustees, I referred your lordships to the Answer to the amended bill.

[*Adjourned.*

*Monday, 30th November, 1835.*

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**SIR C. WETHERELL.**—Before my learned friend goes on, it will be necessary for me to remove a little the ambiguous character in which I formerly appeared before your lordships. I wish to state the situation in which I stand for the City of London, of which you have heard a great deal in the progress of Sir W. Follett's statement; the City of London have various interests, and various duties, and various powers vested in them, into the history and definition, and particularly with the contents of which I do not further enter. The City of London have also vested in them the interests of two minor Companies, namely, the Coopers' and the Brown Bakers'; and I think it necessary here to state, in consequence in part of what has already fell from your lordships, and in part from the duty which I owe to them whom I represent as counsel, to state that now I object, and that after my learned friend is heard, I shall persevere in my objection to this case going on further; for I can state nothing more strongly or more explicitly than the principle thrown out by your lordship, that this is a bill in which other tenants in common are interested—the twelve principal Companies.

**MR. WIGRAM.**—Sir Charles Wetherell must either appear or not.

**SIR C. WETHERELL.**—I do appear.

**MR. WIGRAM.**—You appear upon the motion?

**SIR C. WETHERELL.**—I appear.

**MR. WIGRAM.**—Upon the motion?

**SIR C. WETHERELL.**—I appear.

MR. WIGRAM.—Then there is an appearance entered for the City, because I am quite prepared upon the other point; my objection is to Sir C. Wetherell being heard, unless he chooses to appear.

SIR C. WETHERELL.—I shall appear.

MR. WIGRAM.—This is a contest now between me and the Irish Society. I undertake upon the trial between me and them, to show that the City have no right to appear upon this question. The City is standing in the situation of two of the Companies interested as *cestui que* trusts. Your lordships have decided that they are to appear; but *quâ* City in that capacity Sir C. Wetherell now claims to appear, I submit that he cannot appear.

Lord Commissioner PEPYS.—The City have certain interests.

SIR C. WETHERELL.—You say that you will not let me have the right of an appearing party. An appearing party has a right to submit to the Court, that other parties ought to appear. My learned friend is rather too rigid in saying that he will enter an appearance for the City of London; and that when they appear, he will not permit them to object.

MR. WIGRAM.—Then the City of London now enters an appearance?

SIR C. WETHERELL.—The City of London now states to your lordships a decisive objection, I conceive, against the further progress of this case. The bill is filed by the Skinners' Company against the City of London; that is, No. 1, against the Irish Society; that is, No. 2, against twelve principal Companies, against John Thomas Thorpe, and Henry Schultes. The motion is a motion not served on any of those parties, except upon the Irish Society, which is the only one of all those parties upon whom the motion has been served; and the proposition, therefore, is by these parties, that they will bring on this motion, and that it was intended to be brought on in the absence of the City of London, in the absence of twelve other principal Companies equally interested with the Skinners' Company; and also in the absence of the Governor of the Irish Society, who is dead. The bill being a bill filed

against all these parties, the motion, according to the terms of its notice, and according to the intention of those who managed it, was to be brought on in the absence of all those parties, except the Irish Society.

Now the objection I take is this. For the City of London I stand in these two situations—they have various rights, interests, and powers; whatever they are, this is not the time to enter into them. Your lordships have heard throughout the whole of the very accurate statement of my learned friend, Sir William Follett, the position in which the City of London stands.

Mr. KNIGHT.—Not very accurate statement.

Sir C. WETHERELL.—I mean accurate, as far as it goes. I mean accurate in not misrepresenting; but, however, I will give my learned friend greater credit for his statement than you seem disposed to give him. Your lordships must have heard enough to know that the very first party interested in this case, in one respect, is the City of London. Then, in the absence of all these parties, the motion is made, and has been in part heard. Now the objection which I take is, that it is utterly impossible in any case, especially in a case of this sort, for any order to be made, to take out of the possession of this Society the entire management and control of this property, which, according to the statement, is a property in which the Skinners' Company, not more, but only equally with these twelve other Companies, are interested; it is a thing, I apprehend, out of all practice, out of all rule, and contrary to that wholesome mode of proceeding with which this Court conducts their business, to hear a motion, in which twelve parties are equally interested, at the suit of one, when that order, in point of law, is a nullity; and if the other parties appealed against it, the very making of such an order is itself matter of appeal; and I therefore feel it my duty here to state, that it is a waste of your lordships' time here, as I humbly contend, that this case should go on; and it is under these circumstances that I take the liberty of making my objection.

Now I have stated to your lordships, that the twelve principal Companies are equally interested with the Skinners' Company;

they are the Drapers, &c. Then under them, as your lordships have heard, there are other minor Companies; each of those Companies is again, to a certain extent, a trustee, or otherwise interested, with certain minor Companies, with respect to whom the share taken by the principal Company has been subdivided: for instance, the Mercers' Company, in the entire sum allotted to them, have subdivided it with the Innholders' Company, and the Cooks' Company, the Embroiderers' Company, and the Masons'; each of these four minor Companies have relative portions of the same. Now I do not mean to carry my objection further than to illustrate the principle of it; I will not bind myself one way or another, whether these subordinate Companies ought, or not, to be parties; but I will assume, for the purpose of the argument, that they cannot get on without the presence of the twelve Companies. The framers of this bill have very properly said, there are not only the twelve Companies interested, but each of those Companies is a sort of tenant, in common with the inferior Companies. They have therefore said, We may very likely get on, without making all the subordinate Companies parties; but that this motion can go on, or that this question can proceed, without hearing these parties somehow represented, appears to me, according to the rules of this Court, totally impossible. My Lords, if I considered that the further argument of this case, in my apprehension, would remove this difficulty, instead of making the difficulty more apparent, and the objection more unanswerable, I should individually not have interposed this objection now, until after my learned friends are heard; but upon turning this subject in my mind since it was last discussed, I feel this difficulty to be insurmountable. I think the City of London, in respect of the duty which they owe to themselves or to the other Companies, cannot allow this motion to proceed, without taking this objection.

Mr. KINDERSLEY.—I am with my learned friend, Sir Charles Wetherell, for the City of London, in this case, interposing, as we do, as a matter of right, as the Court considered upon a former occasion that it was a matter of right in the City of London to interpose, as having a distinct and admitted interest

in this case, that the City should interpose, object to the Court going on hearing this, as *esse*, in a manner which shall not be conclusive upon parties; and we insist that, if the thing is to be argued, it shall be argued in such a way as that the decision of the Court shall be conclusive.

Lord Commissioner PEPYS.—Is the objection that you are not served?

Mr. KINDERSLEY.—No; the objection is not that we are not served, but we say that we are one of several tenants in common; and we insist that the other tenants in common shall be served.

Lord Commissioner PEPYS.—You are here to defend your rights?

Mr. KINDERSLEY.—Yes.

Lord Commissioner PEPYS.—Does the City of London represent one of the twelve Companies?

Mr. KINDERSLEY.—No; two of the minor Companies. When mention is made of twelve principal Companies, it means this; that inasmuch as there were twelve principal Companies with which these transactions took place, having larger funds than other Companies, and inasmuch as the object was to have a division into twelve parts, they take one large Company, which would subscribe as nearly as possible • 3,333*l.* 6*s.* 8*d.* But as it did not exactly amount to that, they added to that Company, in a sort of schedule, a number of smaller Companies, whose contributions would make up the sum. It is not that there is any subordinate interest in the minor Companies: each minor Company has the same substantive original interest that the major Company has; therefore when we talk of twelve principal Companies, I beg that the Court may not go away with the notion, that there are twelve Companies who stand in the situation of representing the portions of the estates; but it is, that every one of those minor Companies, though in that sense joined with the major Companies, are still joined with them merely for the purpose of distribution into twelve parts; but the interest of such Company is just as much an original substantive interest, as



the interest of the Skinners' Company, or any other of the major Companies.

Now, my Lords, besides another much more important interest, which I need not now touch upon, we represent the interest of two Companies; namely, the Coopers' and the Brown Bakers' Company. Now, these interests are just as much original substantive interests as the Skinners' Company. But now we are here, and we will suppose that we were served. Now we are here as *cestui que* trusts, as the plaintiffs allege us to be; for the plaintiffs say,—"We, the Skinners' Company, are *cestui que* trusts; and you, the City of London, representing the Coopers', and Brown Bakers', and the Ironmongers', and the Scriveners'," and so on,—you are *co-cestui que* trusts in company with us. They serve the trustee, and they serve us, one of the *cestui que* trusts. Now, we say, we will not submit to have the thing discussed in this piecemeal way. What is to prevent another bill being filed by another Company, if you have not made them parties to this bill? Suppose, for example, that we had been left out, we should say, We are not to be harassed in this piecemeal way. Bring us all before the Court, because we will not have this coming here with a motion, just to feel the pulse of the Court, and see whether it is worth your while to go on to do a little more, or whether you shall wisely stop short here. We say, if we are to have a judgment and decision at all, let us have a conclusive decision and judgment. Now, is not that the common right of *cestui que* trusts in common? I will suppose it to be a case, as my learned friend opened it, simply of pounds, shillings, and pence, or so many acres of land;—I will suppose that all the important interests of a public character involved in this case were entirely out of it: I stand here as one of several *cestui que* trusts, asking your lordships for the common rule of Court to be enforced. Do not let us be harassed and vexed here with these proceedings, piecemeal and merely partial, but have the whole thing discussed. Now we are as such standing here, served or not served, and I do not care which way you take it.

Mr. WIGRAM.—You have appeared.

**Mr. KINDERSLEY.**—Then we stand here as if we had been served. Well, take it in that way; if we have been served, I say you must serve, or you must bring the others here also to discuss the thing—not to discuss the thing piecemeal.

Now the Irish Society may take upon themselves, if they please, as far as they are concerned, to say—we do not care about your serving the others. Be it so. Whether the Irish Society take a right course or not, in not taking the objection specifically, I do not know, but we stand here and take the objection specifically; and your lordships will not understand us now as merely saying, we simply mention it to the Court, that the Court may do as it thinks fit. When the Irish Society took that course, what the Court said was, Well, if you do not take the objection, we may go on and hear the thing, and see whether we can make an order without serving the other parties. But now we do take the objection specifically;—we take the objection as one of the parties interested, and therefore the Court cannot take the same course: you must either say the objection is a good one, or the objection is a bad one. Now, I am not afraid what your lordships will say: you must say, as your former intimation involved the proposition, that the objection is a good one. If the objection is taken, we cannot help ourselves; if there is a defect of parties and one of the parties chooses to take that objection, the Court must adopt that objection. The Court very often, though there be a defect of parties, will not of itself take the objection. But, if one of the parties chooses to take that objection, the Court has no help for itself; but it must decide whether the objection is a good one, or not. Now I take the liberty of asking your lordships to decide whether, putting it upon the narrow ground of a question of so many pounds, shillings, and pence, or so many acres of land,—whether, when we insist upon this objection, your lordships will not say that our objection must prevail, and that the motion cannot go on without having those parties before the Court.

**Mr. RANDELL.**—I am also with Sir Charles Wetherell and Mr. Kindersley in this case for the City of London; and the way in which they became entitled to the interests of those two

Companies was this:—It appears, that up to the year 1611, the Brown Bakers and the Coopers contributed their portion; but, in the year 1611, an Act of Common Council was passed to raise a further sum of 10,000*l.*; and upon that occasion the Coopers and Brown Bakers refused to contribute their portion of the 10,000*l.*; and they accompanied the refusal by a vote, saying, that they were willing to lose their former contributions. The City of London then stepped in, and it appears by their answer, that they have contributed the portion of the Brown Bakers and Coopers, and therefore they have been entitled since to stand precisely in their case. They contributed the sum which was payable at that time by those two Companies. We, therefore, the City of London, as representing the interest of the Coopers and the Brown Bakers, stand in the same situation as the other members of the minor Companies. There are about forty-five altogether; and I believe the whole of the Companies have been, in point of fact, made parties to this suit.

Now, what are your lordships asked to do by this motion? Your lordships are asked to appoint a Receiver to interfere with the legal estate,—one of the strongest things perhaps that this Court can be asked to do. So that behind the back of a great number of persons, I believe altogether forty-five Companies in number, you are asked to interfere with their legal estate, and to appoint a Receiver to take the management of these properties out of the hands of the persons in whom it has been ever since the Corporation was formed; and you are asked to do all that behind the backs of the parties, who have just as much interest and as much right as the Skinners to be heard upon this motion. I apprehend that it is totally contrary to the practice of this Court. It has been laid down by a great and undeviating series of decisions, that the Court never will interfere with the legal interest, whether it is vested in trustees or in whosoever hands it may be, behind the backs of parties who stand in the situation of *cestui que* trusts; and that it will never deal with the legal estate unless all the parties, who have an interest as *cestui que* trusts, be before the Court. Now, if your lordships are to entertain this motion, you are entertaining it for nothing,

if your lordships agree with that proposition, that the Court never can make an order in reference to the legal estate behind the backs of parties interested in it.

Mr. SEATON.—I am instructed to appear for two of the minor Companies, who have not been served.

Lord Commissioner PEPYS.—Mr. Wigram, you must say whether you accept this appearance. These are parties who are not served, who appear. Now, if you accept this appearance, the Court has no power to interfere; but the case must then be considered as if they had actually been served and appeared.

Mr. WIGRAM.—I hope your lordships will allow me to make this qualification. The City of London appear in two characters, one as claiming to be visitors, and insisting that, because they are visitors, having no interest, they ought to be parties; the other, saying that they hold some of the shares originally vested in some of the minor Companies. Now I stated, that with respect to the character of visitors, we have considered that they are not entitled to service; and with respect to that character, if the City chooses to appear, the City must not appear as being served by us. But I make no objection to their appearing in that character, if they say they appear in the character of assignees of some of the original minor Companies. Your lordships have already decided, that in that character they are at liberty to appear, and must appear, if they please; and therefore, as to them, I consider them as appearing as if they had been served.

Lord Commissioner PEPYS.—If you serve them, you do not serve them in one character and not in another; you serve them as parties in the cause; and being here as parties in the cause, they make what case they can.

Mr. WIGRAM.—It is only with respect to costs I make the distinction.

Sir C. WETHERELL.—You need not be so tender about costs; we are not so tender about costs.

Mr. SEATON.—I appear here, first, for the Barbers' Company and one of the minor Companies, to submit to the order of the Court; I also appear for the White Bakers' Company, one of

the Companies associated with the Skinners' Company, one of the principal Companies, and they do not concur in the suit; they are opposed to the object of this motion; they consider that the Irish Society is perfectly competent to the duties imposed upon it, and that the appointment of a Receiver by this Court is not only unnecessary, but would be attended with inconvenience.

Mr. WIGRAM.—That point will arise in due course; and with regard to the minor Companies, your lordships, I understand, disposed of the objection in this way—that with reference to the enormous expense of making them parties, you reserved the question till the other side had been heard.

Lord Commissioner PEPYS.—I considered that the Court could not appoint a Receiver without hearing the other parties upon the subject; but when it was stated by Mr. Knight, that he had a decided answer to the whole, it seemed unnecessary to bring the other parties before the Court, merely to hear the motion dismissed. If he failed in doing that, and it appeared to us that there was a case made, then I considered it would be necessary to hear the other parties before an order was made.

Mr. WIGRAM.—I can relieve the Court of all difficulty about it. We have now got the consent of upwards of forty of the defendants, appearing, either submitting or consenting, to the order of the Court. The White Bakers' Company happens to be in this situation, that the Governor or one of the leading Members happens to be in the Irish Society, and we have not therefore succeeded in obtaining their consent; but with that exception we shall be in the situation to be able to say that we have the consent of all. I have seen the paper, signed by as many as twenty-three, most of them appearing for themselves and others: in point of fact it was wholly through a misapprehension on my part that the difficulty suggested the other day about their non-appearance arose.

Lord Commissioner PEPYS.—Then there will be no difficulty; then every one of those parties either will appear to submit to what the Court shall direct, or to resist the motion.

Sir C. WETHERELL.—I apprehend that in a case of this sort the Court cannot hear the motion upon a gratuitous statement that all these parties by and by will appear. Are we to understand that they will appear and pay the costs? My learned friend says, that they will appear. I do not know in what way it is that they appear; do they appear by their counsel?

Lord Commissioner PEPYS.—They appear by counsel, of course.

Mr. WIGRAM.—They appear by counsel, and I believe I shall be their counsel.

Lord Commissioner PEPYS.—If the counsel making the motion state that they have their consent, the Court of course requires no more.

Sir C. WETHERELL.—I beg to ask the solicitor, whether there is any memorandum that all these gentlemen do consent?

Mr. WIGRAM.—I should consider it irregular in Sir Charles Wetherell to make this point now, after what your lordships have said about hearing the motion out to a certain extent; because, if it might be said that formally he was not before the Court on the former day, yet personally he was present to take an objection, and he ought then to have made the objection, instead of allowing us to come here upon the supposition that that point was concluded, and now come here to make this objection.

Sir C. WETHERELL.—I did state the objection; I said that I did not appear before the Court in a decided character, whether as party or not party; but I distinctly stated, that if the time came when I should be considered a party before the Court, I should object to the other parties not being heard. As to these numerous consents, my learned friend only says, that he is instructed that somebody will by and by instruct him. Is there any gentleman in Court that has any written assent of these parties? because they must appear, and an appearance must be entered so as to bind themselves.

Mr. WIGRAM.—It appears to me that the only question is, whether this is to stand over till we have served the others. Your lordships decided the other way, the other day.

Lord Commissioner PEPYS.—But then there was nobody to make the objection. The Court will hear any party state, There is a proceeding going on in which I am interested; and the Court will take care to make an order in which that party is interested; but when a party states that he, as one of several standing in the same predicament, makes the objection, the Court is bound to make the objection; and it makes all the difference whether Sir Charles Wetherell appears as a party in these proceedings, or whether he merely states to the Court that his client has an interest which may be affected by this order.

Mr. WIGRAM.—But as Sir Charles Wetherell appears only as one of the *cestui que* trusts——

Sir C. WETHERELL.—I appear in all my capacities. I do not choose to be narrowed to one capacity.

Mr. WIGRAM.—Sir Charles Wetherell excluded himself from appearing except in the character of one of the *cestui que* trusts. Now, suppose there were several *cestui que* trusts, and one of the *cestui que* trusts objects that the others are not served, the trustee not making the objection,—will not the Court be satisfied, after what has passed, to allow the motion to proceed, as, in point of fact, the one that does appear has not any interest in the question whether the others are served or not?

Lord Commissioner PEPYS.—Otherwise this motion might be renewed on behalf of every one of the absent Companies, when an order has been obtained, by parties interested in a portion of this fund. Here are thirty or forty parties; you say you have got the concurrence of several, so that this matter would be to be discussed as many times as there are parties.

Mr. WIGRAM.—I am now informed that we have the consent of every one, except the Coopers and the Brown Bakers, who are represented by Sir C. Wetherell.

Sir C. WETHERELL.—I must state that that is contrary to the practice of the Court. When there is a slight interest which a person undertakes to get in, the Court will take that upon credit; but it is contrary to the practice that the Court should

allow such companies as the Grocers', and the Drapers', and the great Fishmongers' Company, the Leviathan of companies, who would think themselves degraded if they were disposed of upon such a motion as this, by a sort of side-bar consent, which nobody understands whether it is a promise, or half a promise, or a quarter of a promise, or an eighth of a promise, or what ; so that your lordships are in this implied manner to get in the consent of all the great Companies of London, none of whom have been served, and none of whom appear by their own counsel : though they are in interest, in reputation, and in credit, equally interested with the Skinners' Company, they have not gone on along with them, but permitted the bill to be filed, and then upon the motion some one gets up and says that they have their consent. I say that the Court have not dealt in this way with absent parties ; and therefore I must say, not doubting the sincerity of this solicitor, that it is not so that interests of this sort are to be dealt with ; that your lordships must have something written—something positive in writing to satisfy the Court that they do appear, so as to abide all the consequences of the suit.

Mr. WIGRAM.—I feel bound to qualify what I said. I appear with the consent of at least forty of the Companies, but one or two have in terms put this qualification, “ subject to the confirmation of a Court of Assistants.” In point of fact, that is formal ; but having stated that we have their assent, I felt bound to make this qualification.

Lord Commissioner PEPYS.—Then that is not such an assent as would bind them.

Mr. WIGRAM.—It only applies to two. Substantially they are as certain of appearing upon this motion as can be.

Lord Commissioner PEPYS.—But still it is not in that state that the Court can bind them, and that is what the Court requires.

Mr. LLOYD.—There is one part of this motion upon which, at any rate, we are entitled to go on ; and that is the payment of money into Court.

Lord Commissioner PEPYS.—We shall not go on with half



the motion, and hear the other part at some other time, unless you abandon the other half.

Sir C. WETHERELL.—With respect to their getting the assents of the Court of Assistants, I dare say there is not one in twenty that understands any thing of the subject.

Mr. WIGRAM.—I am afraid after your lordships' decision it must stand over till we get these consents formally ratified.

Lord Commissioner PEPPYS.—You had better get it before Wednesday, because otherwise we cannot finish.

Sir C. WETHERELL.—I beg leave to say, that unless I am satisfied that the consent of these Companies is given in some regular and formal manner by the Court of Assistants, I shall make my objection.

Mr. WIGRAM.—It is perhaps not possible that a Court of Assistants can be held before Wednesday ; and therefore it had better stand over till the next sitting of the Court.

Lord Commissioner PEPPYS.—That will be Saturday week.

Mr. WIGRAM.—Saturday week.

*[Adjourned.]*

*Saturday, 12th December, 1835.*

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Sir C. WETHERELL.—The gentlemen were to serve some of the Companies.

Mr. WIGRAM.—I am going to remove your objection. My Lords, when this motion was last before your lordships, it stood over upon an objection taken by my learned friend, Sir Charles Wetherell, on the part of the City of London, that the principal and minor Companies of the City—

Mr. KNIGHT.—As you may hear, I am not in a condition to make a speech of any length, and therefore I am afraid I should have to ask your lordships' indulgence to give me time to recover my voice; but as to the objection of the want of parties taken on the part of the City of London, that may be set right as far as it goes, and brought to an understandable condition now.

Mr. WIGRAM.—I was going to say, that, having been informed of the unfortunate situation of my learned friend's voice, the course I propose to take is this: I would now cure the defect wholly as to the parties. After having done so, of course I will not, at the expense of my learned friend's convenience, attempt to force this out to-day; but I am bound of course to say, that although willing to make every concession to his client, it ought not to be at the expense of my client. Now the unfortunate situation we are in is this; that the Irish Society, expressing by their counsel great anxiety to hear the merits of this case gone into, do unfortunately, out of Court, interpose the greatest possible difficulties to our going on, by

their interference with the other Companies, who are willing that the case should go on. If it is now understood that when this case comes on again, supposing all objections on the part of the City of London are removed, if my learned friends will undertake, upon the motion coming on again, to place us in the condition we were in on the last day,—that is, that they are willing to go on upon the merits,—I have no objection.

Mr. KNIGHT.—I shall make no matter of bargain. Let the thing go on. I will speak till midnight sooner than make any bargain.

Mr. WIGRAM.—Now?

Mr. KNIGHT.—Yes; now.

Mr. WIGRAM.—Of course it cannot go on in the state in which my learned friend's voice is now.

Mr. KNIGHT.—Let the thing go on. I will not be under any condition.

Mr. WIGRAM.—I am instructed to appear for twelve of the Companies. With regard to ten of the Companies we have the affidavit of service upon the Company, and the majority of those will not appear, but they desired merely to have an affidavit of service. With regard to all the others, the solicitors of the different Companies have each of them furnished us with a note, informing us who will appear for their different Companies, and it will cover the whole of the persons named as parties to the record.

Lord Commissioner PEPYS.—I understand that you either have an affidavit of service, or you have an undertaking to appear from all the Companies.

Mr. WIGRAM.—Yes. I mean all that are parties to the suit. It stands in this condition. Some of the persons who have been originally parties have disclaimed upon the record, and others we are in a condition to prove have assigned over their interest, and of course they are not parties to the record. When I speak of service upon all parties, or the appearance of all parties, I mean all those who are named as parties to the record.

Mr. JACOB.—The Basket-makers' Company; does any body appear for them?

**Mr. WIGRAM.**—I am instructed that they have never appeared in the suit. Before they did appear, an order was obtained to strike them out,—to dismiss them. “Upon a motion this day made to the Court on the 16th of July, 1835, by Mr. Lloyd, of counsel for the plaintiffs, it was alleged that the plaintiffs, having exhibited their bill against the defendants, the Master, and Wardens, and Commonalty of the art and mystery of Glaziers, in the City of London, they appear to the bill and put in a disclaimer, &c. &c.” [*reads the order dismissing the Glaziers, Basket-makers, and Coopers, from the suit.*] I apprehend that is quite enough as regards them. I have not, of course, been through every one myself, but I am instructed that with respect to every one, we either have an affidavit of service, or an appearance, or I appear for them.

**Sir C. WETHERELL.**—It will become necessary to inquire, by and by, whether the case can go on without the presence of the parties; but, in the present shape of the objection, that does not arise.

**Mr. JACOB.**—It may be convenient that my learned friends should inform us who they appear for.

**Mr. KNIGHT.**—And the registrar may take it down.

**Mr. JACOB.**—You say you appear for twelve of the Companies. I wish that the registrar should have it down, that the record may shew that Mr. Wigram has appeared upon this motion for these twelve Companies, in case any question should hereafter arise.

**Mr. WIGRAM.**—The parties for whom I am instructed to appear are, the Drapers, the Mercers, the Haberdashers, the Grocers, the Innholders, the Pewterers, the Fruiterers, the Masons, the Armourers, the Blacksmiths, and the Merchant Tailors. I appear also for the Skinners' Company, who are the plaintiffs. My Lords, the parties who are served, and upon whom we have an affidavit of service, are, the Goldsmiths, the Ironmongers, the Vintners, the Fruiterers, the Stationers, the Curriers, the Upholders, the Bowyers, the Fletchers, and the Butchers; and my learned friend, Mr. John Romilly, I think, appears for the Fishmongers, the Cooks,

the Plumbers, the Weavers, the Tilers and Bricklayers. My learned friend also appears for the Curriers. Then my learned friend, Mr. John Walker, appears for the Salters and the Dyers.

Mr. WALKER.—I appear for the Salters and the Dyers, the Saddlers, the Cutlers, and the Joiners.

Mr. WIGRAM.—Then the Cloth-workers appear by my learned friend, Mr. Hayter. Mr. Russell appears for the Carpenters, and my learned friend, Mr. Lovatt, appears for the Poulterers.

Mr. LOVATT.—The Vintners, Poulterers, and Fruiterers.

Mr. WIGRAM.—Mr. Duckworth appears for the Ironmongers, as I am instructed they have been served. Mr. Norton appears for the Wax Chandlers. Mr. Rogers appears for the Girdlers. Mr. Blount appears for the Scriveners. The others have been served. My learned friend, Mr. Seaton, has already appeared for the Barbers and the White Bakers. I have not mentioned the names of the Counsel who appear for those who have been served; because, of course, they will appear. My learned friend, Mr. Sharpe, I think, appears for the Brewers.

Mr. SHARPE.—For the Brewers.

Mr. WIGRAM.—I believe that exhausts the whole of the Companies.

Mr. WHITMARSH.—I appear for the Butchers' Company.

Mr. WIGRAM.—Mr. Whitmarsh appears for the Butchers;—that, I believe, exhausts the whole, with the exception of the Brown Bakers and the Coopers, for whom Sir C. Wetherell stated that he appeared.

Sir C. WETHERELL.—Who appears for Mr. Alderman Thorpe?

Mr. WIGRAM.—I do not know who Mr. Alderman Thorpe is. I am only anxious now to put this in a condition to proceed; and then, of course, I am willing that it should stand over, so as to place us in the same condition that we are now in.

Lord Commissioner PEPYS.—You have accounted for all the Companies?

Mr. WIGRAM.—I have.

Lord Commissioner PEPYS.—Now Mr. Knight.

Mr. KNIGHT.—I have no objection to its going on, so far as it can go on.

Mr. WIGRAM.—May I ask Sir C. Wetherell if his objections are now removed? because he was the objecting party.

Mr. KNIGHT.—I do not know.

Lord Commissioner PEPYS.—As we can only go to a certain extent, it would be more convenient that it should be postponed altogether. If there are any preliminary questions, we can dispose of them now.

Mr. WIGRAM.—I only want to remove the preliminary objections, because otherwise I can take the intermediate time to remove them, if any yet remain. My learned friend, Mr. Wood, stated that he appeared for Mr. Schultes; but I object to that, because Mr. Schultes is not stated to have any interest at all; he was Secretary to the Irish Society, and is made a party defendant for the purposes of discovery only.

Mr. WOOD.—They have served him with a notice.

Mr. WIGRAM.—I am informed that the contrary is the case. The Irish Society was served, but no notice served upon Mr. Schultes; and, of course, none ought to be served upon him.

Lord Commissioner PEPYS.—That is a different objection from what you have had hitherto to contend with. Before, you had not parties enough; now you say you have one too many;—that we can dispose of when he offers to be heard.

Mr. WOOD.—Here is the notice to appear: [*producing a paper.*]

Lord Commissioner PEPYS.—We need not discuss it now. When you offer to be heard we can discuss that.

Mr. KNIGHT.—Sir Charles Wetherell must look into this. That is an affidavit of service of notice of motion after the motion has commenced. I do not think they would be bound to appear upon that. It appears to me not a notice that would call upon them to appear. It is a notice of motion in the middle of the motion, not two days before it, as the rule of the Court requires.

Mr. WIGRAM.—Yes; it was three days before.

Mr. KNIGHT.—I do not take the objection.

Sir C. WETHERELL.—As far as the objection I have made is concerned, of course what answer has been given to it your lordships have heard. With respect to those that appear, of course their appearance puts an end to that objection; with respect to those that have been served, all I can say is, that the purposes I had in view in stating this objection were, first, that the City of London stand in a condition which by and by will be more developed. They are in one respect trustees of these funds; they are in another respect armed with certain powers of control, wardenship, jurisdiction, and authority over them. And, thirdly, they stand in the situation, that whatever Companies are interested in these funds, they are bound to take care that those Companies shall have the same opportunity of stating their view of the case before this Court, as those who have made themselves the movers upon this information. Having stated that objection, it is not for me to carry the objection further. If it turns out that every party upon this large roll has been served, or appears, then, so far as the ordinary shape of the objection presents itself, that objection in the general view of it would be removed.

Mr. WIGRAM.—I believe now that all the preliminary objections are removed.

Lord Commissioner PEPYS.—It only remains to fix the day for going on with it. Mr. Knight, I hope that before the 4th of January you will be restored.

Mr. KNIGHT.—I hope so, and I hope before Monday; but it is clear that the case could not be finished now; and even if I were prepared to go on it could not be finished, because my learned friend Sir William Follett is not here, unless Mr. Wigram was prepared to take the reply. Therefore I do not think that much is lost.

Lord Commissioner PEPYS.—The 4th of January is the next day we sit.

Sir C. WETHERELL.—But, then, I apprehend, with great deference, that my learned friend who sits near me will be obliged to be present in another court. Of course the Recorder of the City of London is no mean personage in a case of this

sort; and so many of my learned friends are likely not to be in town at that time, that I should conceive that some other day would be more convenient.

Lord Commissioner PEPYS.—I will take a later day, provided we shall be sure of finishing it before the term.

Mr. KNIGHT.—A week later?

Lord Commissioner PEPYS.—That will come too near the term.

Mr. RECORDER.—If your Lordship pleases, any day after the 6th.

Lord Commissioner PEPYS.—That will give us time enough to get through it.

Lord Commissioner BOSANQUET.—That will leave Thursday, Friday, and Saturday.

Lord Commissioner PEPYS.—Then it stands for the 7th.

Sir C. WETHERELL.—I do not know any reason why the bar are to give up all other objects to favour the Skinners' Company, who are coming here with this posthumous claim of theirs; and I do not see why all other persons' arrangements and business are to give way to the Skinners' Company, who, till within these ten days, were a solitary claimant in this case. They have certainly now scrambled and picked up coadjutors to go on with this suit; but it is only within twenty-four hours that this suit was competent to be launched and to be heard; and I say that this motion is not now competent to be launched and to be heard; and if I were to persevere in my objections, I think I could stop it *in limine*: but I waive them. But I do not see any reason why the business of the Court and the convenience of the bar is to be sacrificed to the Skinners' Company; and I therefore beg now to say, that I shall not attend during the recess to give way to the Skinners' Company.

Mr. WIGRAM.—I make no claim specially on behalf of the Skinners' Company. This is a regular motion, and it would go on regularly upon this day, but it is agreed that it shall stand over for the convenience of my learned friend.

Mr. KNIGHT.—I do not wish it to stand over. I shall be ready to speak on Monday. But I shall make this objection,



which I should have made in any case, that we are not to be heard out, and then for it to stand over for Sir William Follett.

Mr. WIGRAM.—Certainly not.

Lord Commissioner PEPYS.—At all events it would be inconvenient to go on with it now, and the only time we can fix is the 7th. I am sorry to fix any day inconvenient to any member of the bar, but if there is no other day, we must go on upon that day.

*[Adjourned.]*

*Thursday, 7th January, 1836.*

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Mr. WHITMARSH.—Before my learned friend goes on, I wish to state, when this was before the Court the other day, I appeared on the part of the Butchers' Company, and I am now instructed to appear on the part of the Tilers' and Bricklayers', who were not represented.

Mr. WIGRAM.—Oh, yes, they were; Mr. Romilly then appeared on their behalf; there was an appearance entered for them before, there need not be an appearance entered now; their choosing to change their counsel makes no difference with respect to appearance.

Mr. WHITMARSH.—It is a very immaterial fact, but Mr. Romilly does not appear for them now, and there is nobody to represent them but myself.

Mr. JACOB.—I beg your pardon, counsel appeared for them.

Mr. KNIGHT.—That cannot be waived; the counsel must act on the validity of their instruction.

Mr. JACOB.—The appearance cannot be waived.

Mr. WHITMARSH.—The appearance is not waived; the Court will allow me to say, that I now appear for the Tilers' and Bricklayers' Company.

Mr. JEREMY.—I should perhaps state, that I appear for the Stationers' Company.

Mr. LLOYD.—My Lord, I appear, in this case, with my learned friends, Sir W. Follett and Mr. Wigram, in support of this motion. The notice of motion, which has been served

put in by my learned friend Mr. Wigram ; it is headed in this way : “ We, the Committees appointed by the Common Council, held on the 2d of December, 1609, to consider of all circumstances and matters fit to be remembered concerning the plantation in Ulster, have met five several days, and long debated and consulted of all things incident to so great a business ; and for the better ordering of our proceedings, we propounded to ourselves four general heads, under which we handled every particular in his proper place.” The four heads under which they appear to have divided the subject were these :—First, What sums of money should be expended. Secondly, What land and privileges should be demanded. Thirdly, What things should be performed. Fourthly, How all should be managed and ruled. The sum which they supposed should be expended upon the plantation was the sum of 20,000*l.* in the whole ; of which 5,000*l.* was to be applied to the buying in of particular interests in the lands the king proposed to grant, in order that the undertakers, the citizens of London, might have the whole interest in those lands ; and the sum of 15,000*l.* was to be expended in carrying into effect the plantation. They proposed also in that report, that the 20,000*l.* should be raised by way of companies, according to the corn-rate : that is quite consistent with the previous communication which had been made with the Companies of the City of London, who had been consulted with reference to the proposal of the king for the immediate undertaking of the plantation. And then we find after the viewers had been sent over, and their report made to the Common Council, this committee of the Court of Common Council proposed that the 20,000*l.* to be expended on the plantation should be raised by way of Companies according to the corn-rate—according to the rate of corn set on every Company. That reference to the corn-rate was merely for the purpose of equalizing the bargain as between the Companies, or equalizing rather the contribution ; because we consider that the Companies were throughout volunteer undertakers in this projected plantation. The corn-rate appears to have been a rate affixed on the several Companies of the City of London for laying in corn every year, in orde-

to provide against any scarcity within the City ; but the corn which they purchased by means of the rate thus imposed upon them was always the property of the Companies themselves, and did not belong to the Corporation of the City ; so that even supposing that this reference to the corn-rate, in order to the levying of the money for the plantation, ascertained the description of the bargain which was to be imposed upon the several Companies, yet still, if we pursue the analogy to the corn-rate, that which was purchased with the 20,000*l.* belonged to the Companies themselves, and not to the Corporation of the City ; but in fact, it may be considered that this reference to the corn-rate was merely for the purpose of ascertaining the mode in which the money should be levied upon the Companies, and nothing more.

The second head which the Committee proposed was, " What land and privileges should be demanded ; thirdly, what things should be performed ; fourthly, how all should be managed and ruled." It is not necessary for me to do more than merely to advert to the second and third heads ; namely, " What land and privileges should be demanded, and what things should be performed ;" because we find that the articles subsequently entered into between the king and the citizens of London, follow in almost precise terms the recommendation of the Committee. But the fourth head, " How all should be managed and ruled ?" is, perhaps, material ; because it is out of that recommendation that the Irish Society, who are the defendants in this case, and against whom this motion is made, itself sprung. " It is thought best that a Company be constituted here in London, of the persons to be selected for that purpose, and Corporations to be settled in the two cities of Derry and Coleraine ; but all things concerning this plantation and undertaking to be managed and performed in Ireland by advice and directions from the Company here in London : so that it appears from that, the original suggestion of this Company for the management of the plantation was a suggestion arising from the City of London itself ; or rather from the Committee to whom the investigation of this matter had been referred by the Court of Common Council.

That report of the Committee was approved by the Court of Common Council, and in pursuance of that approval, on the 28th of January, 1609, articles of agreement were entered into between certain persons on behalf of the City of London, and certain members of the Privy Council; they are headed, "Articles of agreement made and entered into the 28th January 1609, between the right honourable the Lords of His Majesty's most honourable Privy Council, on the King's Majesty's behalf of the one part, and the Committee appointed by act of Common Council, on behalf of the Mayor and Commonalty of the City of London of the other part, concerning a plantation in part of the Province of Ulster." By these articles of agreement, "it was agreed by the City that the sum of 20,000*l.* should be levied, whereof 15,000*l.* was to be expended on the intended plantation, and 5,000*l.* for the clearing of private men's interests in the things demanded; second, also, that at the Derry two hundred houses should be built, and room to be left for three hundred more, and that 4,000 acres lying on the Derry side next adjacent to the Derry, should be laid thereunto, bog and barren mountain to be no part thereof, but to go as waste for the City; the same to be done by indifferent commissioners. Third, also, that the Bishop and Dean of the Derry should have convenient plots of ground for the site of their houses at the Derry." Then, "with respect to the town of Coleraine, one hundred houses were to be built thereon, and room left for two hundred more, and that 3,000 acres of land should be laid thereunto." And then some provision was made as to the situation of these three thousand acres. The 7th article runs thus—"That the woods, and the ground, and soil of Glanconkene and Killetrough, extending from the county of Coleraine to Ballinderry, be wholly to the City in perpetuity; the timber trees of those woods to be converted to the furtherance of plantation, and all necessary uses within Ireland, and none to be made merchandize;" the city was to "have the patronage of all the churches, as well within the said city of the Derry and town of Coleraine, as in all the lands to be undertaken by them." And then it provides for the quit rent which is payable to the king; the lands were to be held in fee burgage,

and common socage. And the 14th article was—"That the salmon and eel fishing of the rivers of Bann, Lough Foyle, and all other kinds of fishing in the river of Lough Foyle, so far as the river floweth; and in the Bann to Lough Neagh, should be in perpetuity to the City. Fifteenth, that the City should have liberty to transport all prohibited wares growing upon their own lands." The 20th article was—"That the City should have the castle of Culmore, and the land thereunto in fee farm, they maintaining a sufficient ward of officers therein." The last article was—"That the City should with all speed set forward the said plantation in such sort as there should be sixty houses built in Derry, and forty houses in Coleraine, by the 1st of November then next following, with convenient fortifications; and the rest of the houses, with the fortifications, should be built and perfected by the 1st of November, 1611." Your lordships will therefore observe, from these articles, that the City came under an obligation to expend upon the plantation 20,000*l.*; that they were to build at the Derry two hundred houses, and to leave room for three hundred more; that they were to grant certain parts of the ground to the Bishop of Derry, and the Dean of Derry; that at Coleraine they were to build one hundred houses, and leave room for two hundred more; that the timber trees were not to be merchandize,—that was another obligation under which the Committee came;—and that they were to maintain a sufficient ward of officers in the castle of Culmore, to guard the castle:—and the last article is merely one which contains a proper obligation upon the City with respect to the time within which those works were to be performed.

These articles, my Lords, were approved by the Court of Common Council, and in pursuance of the scheme which had been suggested by the report of the commissioners, to which I have already drawn your lordships' attention. As to the formation of a Society for the management of this plantation, the Court of Common Council proceeded, in conformity to these articles of agreement, to devise the establishment of the Irish Society, ascertaining at the same time the members of which it should be composed, and the functions which they

should possess by that act of Common Council. The Irish Society,—or rather the committee of management, the Irish Society not being then an Incorporation,—the committee was to consist of one governor, one deputy-governor, and twenty-four assistants; the committee were to be elected by the Court of Common Council; the deputy, and twelve of the assistants to go out annually. They then proceed to name the first members of this committee of management, among whom we find members taken from each of the twelve chief Companies of the City of London. The functions of the Company are thus stated in the act of the Court of Common Council:—"It is further enacted, that the said Company then elected and appointed, or thereafter from time to time to be elected and appointed, or any nine of them, whereof the governor or deputy for the time being to be one, shall have full power and authority to hold and keep a Court, and in the same to treat, debate, and determine of all matter and causes concerning the business that to them in their discretions should think fit, and also to direct, appoint, and command, what should be done or performed on the behalf of the City, concerning the said plantation, and also should give direction in England, either by letters, or otherwise, sent to Ireland, for the ordering, managing, and disposing of all things whatsoever, concerning the intended plantation, or any thing belonging to the Citizens of London's undertaking in that part of Ireland called Ulster; as also for the receiving, ordering, disposing and disbursing of all sums of money that were or should be collected or gathered for that purpose; and, generally, for any other cause, matter, or thing whatsoever, incident to or belonging to the business and affairs in Ulster." They then appoint Mr. Cornelius Fish, chamberlain of this City, to be the treasurer of that Committee of management.

In the month of January, 1610, (old style,) the Companies who had, in pursuance of the act of Common Council, made a levy, raised and paid some part of the 20,000*l.* towards the intended plantation. The Companies were directed to elect whether they would take portions of the lands which were agreed to be granted by the king, and plant them themselves,

or whether they would commit the plantation of them to the committee of management of the Irish Society; but they were at the same time informed, when called upon to make this election, that they would, notwithstanding that election, supposing they should elect to take lands, be entitled to the rents and profits of such parts of the lands agreed to be granted by the king as were retained by the Irish Society; and if they should undertake to plant portions of the lands granted, and the Irish Society retained other parts, the Companies were expressly informed by the precept of the Lord Mayor, calling upon them to make their election, that they were to be entitled to a distribution of the rents and profits of such of the lands as the Irish Society should retain. That precept of the Lord Mayor, intimating to the Companies that if they elected to take parts of the lands in question, they themselves should plant those lands, was prior to the charter of James the First. In the month of March 1613, the king granted his letters patent of that date, conveying the lands in question to the Irish Society. By that charter, the Irish Society were incorporated; and your lordships will allow me to remark in this place, that it formed no part of the original articles of agreement between the King and the City, that any such society as the Irish Society should be formed for the purpose of carrying into effect those articles of agreement. The suggestion of such a society in the shape of a committee of management, was a suggestion of the City itself for the sake of convenience alone; and in order that the articles of agreement might be carried into effect the more conveniently, King James the First, by this charter, appears to have adopted that suggestion of the City of London; and by his charter, which is dated the 29th of March, 1613, he incorporates the Irish Society, and declares by his charter what the functions of that Society shall be.

The constitution of the Irish Society by this charter was precisely the same with the constitution of the Committee of Management, which had been established by the City of London itself. It was to consist of one governor, one deputy-governor, and twenty-four assistants. The quorum of the



Irish Society was to be the same as was fixed by the Committee of Management appointed by the City of London; and the functions of the Irish Society appear to be, so far as relates to the plantation itself, in a great part precisely similar to those functions which were ascertained by the City of London:—the Society, on any question of importance, to hold courts, and in the same court or meeting, to hear, transact, and determine all and all manner of matters and things whatsoever, of, for, or concerning the plantation or government aforesaid, as to them should seem best and most expedient; and also, in the same court or meeting, should have full power and authority to direct, appoint, and ordain, for and on the part of the Mayor and Commonalty of the citizens of the City of London, in the kingdom of England, all and singular things which, for or concerning the plantation, supply, establishment, continuation, and government of said city of Londonderry, and of all other the lands and tenements therein mentioned to be granted, should seem to be most profitable and expedient; and also to send orders and directions from this kingdom of England into the said realm of Ireland, by letters or otherwise, for the ordering, directing, and disposing of all and all matters and things whatsoever, of or concerning the same plantation, or the disposition or government thereof; and also for the receipt, ordering, disposing, and laying out of all sums of money, then or thereafter to be collected and received, and generally, any other cause, matter, or thing whatsoever, concerning the directing or ordering of said plantation, or concerning any other things whatsoever, which, by the true intent of said letters patent, now in statement, could or ought to be done by them, for the better government and rule of said city of Londonderry, and county of Londonderry. It appears, therefore, by a comparison of that part of the letters patent, and the act of Common Council, by which the Committee of Management was appointed, that the functions of the Committee of Management, and the functions of this Corporation, so constituted, were the same.

In a subsequent part of the letters patent, a grant was made by the king to the Society, of all the lands to be undertaken

by the City; quit rents were preserved, and the Irish Society are made to enter into certain covenants with the king, with reference to certain things to be done with respect to the plantation. It is material to compare in this place the description of covenants entered into by the Irish Society with the king, and the acts which were agreed to be done by the City in the original articles of agreement. The covenants which were entered into by the Irish Society by this grant were as follows. This was a covenant to convey to the Bishop of Derry and to the Dean of Derry certain plots of land within the city of Derry: that was in pursuance of one part of the articles of agreement, by which the Bishop of Derry and the Dean of Derry were to have convenient plots of ground for building houses for themselves within the city of Derry. The Irish Society further covenant to repair the castle of Culmore, and to keep and maintain one ward of such, and so many men, well and sufficiently armed, and such expert and sufficient officers, in that behalf requisite, for the time being, by his said majesty, his heirs and successors, from time to time, to be named, constituted, and removed, and of new appointed officers, as should from time to time be requisite and necessary, and sufficient for the maintenance, defence, and safe-keeping of the same castle and fort thereof: should acquit, exonerate, and indemnify and keep harmless his said majesty, his heirs and successors for ever:—that was in pursuance of another part of the articles of agreement, by which the City were bound to repair the castle of Culmore, and to keep a sufficient ward within it. The Irish Society further covenant with the king,—“For that there will be need that great abundance of timber be had and provided for the planting of the premises, and the rebuilding of houses and edifices within the same, and therefore great care is to be had that the timber-trees growing, and which might conveniently and fitly serve towards the plantation of the premises, be not carried out of the said kingdom, or otherwise wasted or spoiled there; and further, they covenant to employ all the timber towards the plantation, and not for any other cause to be merchandized or sold.” These are the whole of the covenants of the Irish Society, contained in this charter of James the First: there is no covenant on the part of the

Irish Society for the rebuilding of houses and fortifications in the city of Derry, or the town of Coleraine ; but the whole of what the Irish Society covenant to perform is, to grant certain plots of land to the Bishop and the Dean of Derry ; to repair and keep a ward in the castle of Culmore ; and to convert the timber upon the undertakers' lands for the benefit of the whole of the plantation, and not to make merchandize of that timber.

My Lords, subsequent to this, various levies were made upon the Companies in order to carry into effect the articles of agreement ; and in the month of June 1613, Mr. Alderman Smithies and Mr. M. Springham were sent over by the Court of Common Council to view the plantation, and to give directions for the purpose of carrying on the works that were there undertaken. They subsequently made their report to the Court of Common Council on their return from Ireland ; and in that Report they state, that it was desired, that the various lands which had been undertaken by the City should be divided among the several Companies who had contributed monies towards the plantation ; but they conceived that certain parts of the lands and hereditaments which had been granted by the charter of James the First were not fit to be divided, from the character of the land and the circumstances they specify in that Report. Those lands consisted of the following particulars :— of 4,000 acres to be laid to Derry, and 3,000 acres to be laid to Coleraine ; the fishings, — the salmon and eel fishings, granted by charter of James the First, and the ferries over certain rivers, &c. Those gentlemen, in making their Report, considered that those various particulars were not fit to be divided among the Companies ; but they stated in their Report that the proceeds from those particulars might be divided among the Companies. That Report was adopted by the Court of Common Council ; and on the 17th of December 1613, an allotment was made among the several Companies in consequence of the Report of those gentlemen. At that time, a sum of 40,000*l.* appears to have been expended upon the plantation ; and the monies thus expended were all levied upon the Companies of the City of London. The 40,000*l.* appears to have been divided into twelve parts of 3,333*l.* and a fraction each ; and that part was assigned to each of the twelve chief

Companies of the City of London, who had been the main contributors to the plantation; and when the amount of the contribution of any of the chief Companies fell short of the twelfth part of this 40,000*l.*, several of the minor Companies, who had been contributors to this, were associated with the chief Companies for the purpose of making up the 3,333*l.*; the various lands which were to be appointed to the Companies was divided in the same manner into twelve parts.

Lord Commissioner PEPYS.—We were told before that we should be furnished with a book which contains all these things. I have got the paging as quoted by Sir W. Follett; but I have not got the book.

Mr. LLOYD.—My only reason for referring to these things is the great interval which has occurred.

Lord Commissioner PEPYS.—We have got some of these documents; we shall of course refer to that book. We have the pages where they are to be found.

Mr. LLOYD.—Many of the references I have made will not be found in the printed book, I apprehend.

Lord Commissioner PEPYS.—We have got the pages where many of these things that have been stated are to be found.

Lord Commissioner BOSANQUET.—You may refer in your argument to the pages of any which are stated in the book;—it will assist us in turning to them.

*[The book was handed to the Court.]*

Mr. LLOYD.—The account of the division your lordships will find in the printed book. In pages 34 to 38 your lordships will find 40,000*l.*, the amount of the assessment then already made upon the several Companies of London towards the plantation in Ireland. This 40,000*l.* was divided into those twelve sums of 3,333*l.* 6*s.* 8*d.*; and where any of the twelve chief Companies had not contributed the whole amount, several of the minor Companies were joined with them, whose contribution, together with that of the chief Company, amounted to that sum of 3,333*l.*; and the lands to be allotted were divided in the same way into twelve parts; and each of the twelve Companies was to undertake the plantation of that twelfth part, and to hold it as a trustee for themselves and the minor

Companies associated with them. We find therefore that, according to that mode of division, the lands which were undertaken, and the rents and profits of those lands, were to go to the persons who had contributed in the proportions of those several contributions.

Various Companies of the City of London then entered into the possession of the lands thus allotted to them, and then proceeded in the work of plantation upon those lands ; but the city of Londonderry, the town of Coleraine, the woods, and fishings, and ferries, were retained in the hands of the Irish Society ; and the Irish Society proceeded with the work of plantation, so far as related to the city of Londonderry and town of Coleraine.

My Lords, in the month of September 1615, King James the First granted his letters patent, by which he gave license to the twelve chief Companies of the City of London, to hold lands in mortmain to be conveyed to them by the Irish Society. In pursuance of that license, the Irish Society subsequently conveyed to each of the several twelve chief Companies, lands which had been allotted to them in the division, to which I have already drawn your lordships' attention.

In the year 1623, it appears that the work of plantation had been so far pursued, that a surplus remained of the rents and profits of the ferries, fisheries, and town lands retained by the Irish Society, over and above what was wanted for the work of plantation ; and we find a dividend of 140*l.* made among the different Companies.

Throughout this period, it appears that the king made various complaints to the City of London, as to the slowness with which the work of plantation was carried on by the various Companies of the City of London, and the Irish Society ; and in the month of March 1632, an information was filed in the Star Chamber against the City of London, complaining of a breach of the Articles of Plantation, and proceeding for a repeal of the Charter. A second information was afterwards filed against the City and the Irish Society. The first information, your lordships observe, was against the City alone ; but the second, in the Star Chamber, was against

the City and the Irish Society. A third was filed against the City, the Irish Society, and the twelve chief Companies of the City of London. Judgment was afterwards given upon that second information; and by that information, a fine of 70,000*l.* was imposed upon the City: the letters patent were declared to have been unduly obtained, and they were ordered to be brought into Court to be cancelled, and the letters were directed to be surrendered to the king. It appears that the powers of the Court of Star Chamber were not sufficient to carry into effect their own sentence; and a writ of *scire facias* afterwards issued out of this Court, for the purpose of cancelling and repealing the letters patent; and upon writ, judgment of repeal was granted, and the letters patent were directed to be brought into Court to be cancelled: but previously to that judgment, the Mayor of the City of London presented a petition to the king, praying that they might be allowed, (notwithstanding the judgment which had been given on the second information in the Star Chamber, which directed the letters patent to be brought into Court to be cancelled,) to proceed to the election of members of the Irish Society, in pursuance of the charter of James the First. And the petition to the king stated, as a reason why they should proceed to that election, that they were entrusted with that power of election for the several Companies of the City of London; and stated, that if they failed to proceed in the requisite election of the members of the Irish Society, in pursuance of the charter, it would be in them a breach of trust towards the Companies of the City of London. The king allowed them, upon that petition, to proceed to the election; and it appears that afterwards, various negotiations were entered into between the King and the City, for the remission of the fine of 70,000*l.*, which had been imposed upon the City of London on the second information in the Star Chamber, and with reference to the giving up by the City of the lands which had been planted.

My Lords, it is stated in the amended bill, that the offers of the City in these negotiations, to give up to the king all the lands which had been undertaken by them, was made upon the consent of the several Companies of the City of London. The

City of London, however, have denied by their Answer that any application was made to the Companies for the purpose of having their consent to that offer made by the king. Now, we have it upon their own reports,—and it is singular therefore that they should have denied by their Answer that any of the Companies of the City of London were applied to for their consent in the matters to which I refer. The application to the several Companies of the City of London, asking them to consent to the City's offering the lands to the king, is to be found on their own records, and appears to be contained in the act of the Court of Common Council, which relates to the negotiations between the City and the King, for the remission of this fine of 70,000*l*.

Mr. JACOB.—What is the date of that act of the Court of Common Council?

Mr. LLOYD.—On the last day of February, 1636; we get it from your own records. My learned friend, I suppose, objects to our reading this against the Irish Society?

Mr. JACOB.—Yes; I have never heard of it before; it was not among those they tendered before.

Mr. LLOYD.—I will refer your lordships to the passage in their answer, which enables me to read it.

Mr. JACOB.—I presume the passage denying the matter.

Mr. LLOYD.—Of course we are entitled to read it against the City.

Mr. JACOB.—I do not appear for the City; this is something not referred to in their bill, nor in the answer of the Irish Society.

Mr. LLOYD.—The Irish Society, by their Answer, state this, in folio 309 and 310,—“ Say they are informed and believe that in the year 1636, a treaty was set on foot between said Corporation of said City of London and his said then Majesty, King Charles the First, with regard to the remission or relaxation of said sentence of the Court of Star Chamber, and the restoration of said charter of James the First, as appears by divers meetings and proceedings of the Court of Common Council of the said City, recorded in the City Records, to which defendants crave leave to refer.”

**Mr. JACOB.**—Is that all?

**Mr. LLOYD.**—"And which said treaty continued till the month of June 1637." Then they go on to refer to one of the records, in which the City make an offer to the king of the lands in question. My object in referring to the act of Common Council, to which I have called your lordships' attention, is to shew that the offer of the lands to the king was made by the previous consent of the Companies of the City of London.

**Mr. JACOB.**—I think it is of some importance to call your lordships' attention to the state in which the cause is. My learned friend appears to have taken it as if this was upon the hearing of the cause instead of upon the motion. We are here upon the motion on the putting in the answer; the defendants having put in their answer, they do not like the answer: at the hearing of the cause they would at least be able to dispute the answer and the statements it contained, and to read such parts as in their discretion they think fit; and if they produced any document, they might verify it by means of it, and contradict that answer.

**Mr. LLOYD.**—This is verified by affidavit.

**Mr. JACOB.**—How do they proceed now? any thing which is verified by documents in our possession, and which forms part of our answer, may be read as forming part of our answer; but my learned friend, I understand, proposes to read certain other documents which he alleges to exist, which he proposes to verify by some affidavit; for there is nothing stated in the bill which leads to it; and this cannot be proposed to be read as part of the answer; this is to make upon us an entirely new case. I apprehend the rule of Court in respect of documents on motion is this:—You have before you the answer; the plaintiff is entitled to read the whole or any part of the answer; the whole answer is considered as put in on a motion; then if there are documents referred to in the answer, and mentioned in the schedule, and admitted to be in the possession of the party, those are treated as being part of the answer; because the Court will upon application direct the party to have actually in Court at the time any documents in his



possession, to which he refers by his answer, and which he has in his possession, and which are incorporated with and made part of the answer: but that which they now attempt is this:—they find in the answer it is said, “that it appears by divers meetings and proceedings of the Court of Common Council of the said City, recorded in the City Records, to which defendants crave leave to refer:” then they say upon that, We are entitled to read all these City Records from the beginning of time to the present time, by producing an affidavit, stating that such and such papers are copies from some portions of the City Records; but they are not admitted to be in our possession, and not mentioned in the schedule to our answer. I admit most entirely this right with respect to all those papers which have been admitted to be in our possession, and which therefore form part of our answer, being referred to as such; but these are documents not in our possession, but in the possession of other parties. My learned friend proposes to read them for the purpose of contradicting what is contained in the answer itself. That which my learned friend reads is, “that the defendants believe that in the year 1636, a treaty was set on foot between the said Corporation of said City of London, and his said then Majesty, King Charles the First, with regard to the remission or relaxation of said sentence of the Court of Star Chamber, and the restoration of said charter of James the First, as appears by divers meetings and proceedings of the Court of Common Council of the said City. That it appears by this there was a treaty between the corporation and the king, and that such treaty continued until the month of June 1637; and that at a Court of Common Council of the said City, held on the 22d of June 1637, the Recorder of said City reported to the said Court, that he and the Committee appointed by the said City for that purpose, had had several meetings with his Majesty’s Lords Commissioners relative to the circumstances aforesaid; and that at length it was declared to the said Committee by their lordships that his Majesty was graciously pleased to accept from said City the lands, fisheries, and customs, and other things in Ireland, together with such monies,” and so on; that

we state only on the grounds referred to, and not stating it with that species of reference which could make the documents in other persons' possession evidence. The reason why I object is not for the purpose of excluding any thing which is relevant, but for the purpose of excluding the enormous inconvenience which will be occasioned by introducing on a motion founded on the answer, extrinsic documents of which we have no copies. We have not the possession, nor even copies of these documents; it is turning the motion into a hearing of the cause, and enabling the parties to proceed, not on the answers which they decline to read, for not a single portion of them has been offered to the Court, but producing papers not set out in the answers, or referred to. Mark the injustice of that to the defendants:—there is no opportunity on my part of bringing forward any matters, for I cannot introduce as the answer that not in his possession. We shall be in a different situation, and not able to bring before the Court parol evidence or documentary evidence, or any thing bearing upon the subject: standing in the same situation, we cannot go beyond that which we have stated. Then in what a situation should we be, if on this kind of motion founded on the answer, the party was to be left at liberty to introduce documents not in the possession of the party against whom they are proposed to be read; and as my learned friend suggests to me since this answer was put in, they have amended their bill, stating other documents, and other things which appear to them material, filling up their case according to what they consider; but they have not stated those in question which they propose now to read to contradict the answer. They are documents not in our possession, and to which we have no opportunity of reference.

Mr. WIGRAM.—Having just come into Court I have not heard the point stated, and therefore will not trouble the Court upon it.

Mr. LLOYD.—Suppose the defendant states that which appears by a document not in his own possession, but referring to the custody in which it is, that it states so and so; he refers to that document, and that document proves directly the reverse

of that which he assumes to be its effect; does not the defendant make that document part of his answer, for the purpose of his own case? and if he does make that document part of his answer, it may be looked out by his opponent.

Mr. JACOB.—The question is, whether he makes it so part of his answer, as to be read on a motion.

Lord Commissioner PEPYS.—It is quite clear, if he refers to the document, though it is not a document in his possession, the plaintiff has a right to see it: is open to the other side for the purpose of production; certainly he cannot then say,—this is not a document in which you have any interest;—the answer is, you have made it part of your answer, for you have stated the result of it, and availed yourself of that which it states.

Mr. JACOB.—The distinction, my Lord, I apprehend is this: you cannot have upon the hearing upon the answer any mode of verifying that document, or of producing it; we cannot produce affidavits.

Lord Commissioner PEPYS.—That is the only difficulty I feel about it.

Mr. JACOB.—Though it is a document not in the defendant's possession, the Court says, if you have specifically referred to it you have made it part of your answer. How is the defendant to produce this to the clerk in Court, and bring it into Court? The Court was in the habit of saying:—You have brought it before the Court, you yourself admitting that that is a document which is relevant, for you produce it on its being called for, and it is lying on the table of the Court. These are not documents which can be ordered to be produced, and it is only proposed by my learned friend to verify them by affidavit. Now, that I apprehend cannot be done upon this species of motion; the only affidavit they have made is of this kind, that they have a paper writing, containing I do not know how many sheets.

Lord Commissioner PEPYS.—This is another question. The first question is,—whether they can be admitted to verify them?

Mr. JACOB.—The document my learned friend wishes to refer to is not stated in the bill.

**Lord Commissioner PEPYS.**—No; it is not stated in the bill, but it is referred to by the answer. The next question is as to the identity of the document. The answer of the defendant states, that there is a certain document in a certain custody, and that that states a certain circumstance. Now, if the defendant stated, that if a certain document in his own possession, though the plaintiff would have no right to see that, purely constituting the defence, the plaintiff would have a right to move for the production of that document to make it evidence: the question is,—whether that rule is not to apply where the document is referred to in precisely the same way, but is not in the possession of the defendant; and, whether the Court ought not to have the means of doing justice between the parties, provided it can be done by a document verified by affidavit. We know that the Court does permit documents to be verified by affidavit, where it appears necessary to the justice of the case, and where the defendant has not put the plaintiff into a situation of having access to them. I do not know any instance where the exact thing has occurred, but by analogy to those rules; if it is necessary to come to a decision upon it I should be disposed to hold, that the party who has referred to a document cannot withhold it; he must take it for better or worse; the manner of identifying it is another question.

**Mr. JACOB.**—They have made their affidavit, referring to a certain number of things. That a certain bundle of papers, or mass of papers—the several paper writings, contained in sixty-one sheets of paper, and numbered from 1 to 61 inclusive, and marked on the outside Letter B. produced and shewn to the defendant, are copies of documents furnished to this deponent by Henry Woodthorpe, Esq.

**Mr. LLOYD.**—That is not all. These are examined copies, not office copies.

**Mr. JACOB.**—As to these sixty-one sheets of paper, and another bundle containing we do not know how many sheets, that is all they say.

**Lord Commissioner PEPYS.**—They say, this is not one of those papers.

**Mr. JACOB.**—They have neither in the bill, nor in the

affidavit, any thing which informs us of the contents, or alleged contents of that document they now propose to read ; and until my learned friend Mr. Lloyd stated what he was going to read, we had not the slightest notion of the contents or supposed contents of that document. I apprehend they should have given us some affidavit of that document, embodying it in the affidavit, so that coming here we might at least know something about the nature of that document about to be read against us : and another point I would suggest is, that there is a very great inconvenience in the mode of doing this. The usual course is, that after the conclusion of the address of the senior counsel they put in, in detail, the documents which they propose to read : this, I understand, was not one of those ?

Mr. WIGRAM.—No ; of course not.

Mr. JACOB.—This was not one of them. At that time we objected to the production of one document not noticed in the bill, or in any way proved ; and with respect to this we are placed under the same kind of difficulty, a difficulty the party will not have at the hearing of the cause ; then he comes prepared to meet all such documents as may be tendered against him ; but on the motion the party proceeds by affidavit.

Lord Commissioner PEPYS.—What is the affidavit ? What do they say ?

Mr. WIGRAM.—Your lordship is not asking me now to argue the point, but to read it.

Lord Commissioner PEPYS.—Yes.

Mr. WIGRAM.—It is the affidavit of Mr. Daniel, clerk to Mr. Kensitt, containing the common verification of exhibits. It states his having searched in the books of record, or repositories, in the City of London, wherein are recorded the proceedings of the Corporation ; and that the paper marked with the letter B is a true copy from the record of the acts and proceedings he so found.

*[The affidavit was read.]*

Mr. JACOB.—All we know is, that it is taken from the bundle containing sheets numbered from 1 to 149. I am not able to say how far it can be said to be one of those documents to which this portion of the Answer refers.

Lord Commissioner PEPYS.—That can be ascertained only when it is produced. You refer to a class of documents; and they verify these as copies of the documents. They tender this on the ground that it is one of those documents to which you refer. Whether it be or not can only appear when it is produced.

Mr. JACOB.—Not having given us the contents of it?

Mr. WIGRAM.—It is the common course of producing documents.

Mr. JACOB.—But there is this difference, on which the whole of the proceeding appears to rest, confounding the motion with the hearing of the cause. On the hearing of the cause I have no right to see the paper till they produce it. But, on a motion, they ought to come into Court prepared with the contents of that which they call part of our Answer.

Lord Commissioner PEPYS.—They can read it only on the ground of your having made it part of your Answer; and if you make it part of your Answer, you cannot complain of its being put in against you on the hearing of the motion. You have given them information of these documents; and they verify them, and bring them before the Court.

Mr. JACOB.—One inconvenience is, that this enables them to bring before the Court any thing they please on the ground that it comes within that description.

Lord Commissioner PEPYS.—We shall see whether it does or not.

Mr. JACOB.—Of course, the judgment of the Court must be exercised, whether it is of that description.

Mr. LLOYD.—My learned friend cannot have much cause to complain of our putting in that document; for it is obvious that, in the Answers to our bill, they must have referred to all the documents of the City of London, of which this is one; and therefore they must be fully cognizant of that document; and I read it as part of the defendant's Answer. The document is the act of Court of Common Council of the last day of February 1636.

Mr. JACOB.—Can you spare us a copy of it?

Mr. WIGRAM.—You have got copies of every one of these.

Mr. LLOYD.—The dates of all the documents we shall use, or have used, were sent to the other side.

Mr. JACOB.—I can assure you we have no copy of it. I should have been glad to have seen it; otherwise, the whole is obliged to be read. If we can see what is the effect of it, that may save trouble.

Mr. LLOYD.—It is a very large document; and I do not like to take up the time of the Court in reading more than is necessary.

Mr. JACOB.—I wish you would let us have a copy before you read it. With respect to papers consisting of 249 sheets and 69 sheets, it becomes a very important question, whether our clients are to take copies of them to instruct their Council.

Mr. WIGRAM.—It would be a very serious thing if you had not office copies of every one of them.

Mr. JACOB.—We have not, I assure you, any copy of it.

Mr. LLOYD.—“It was therefore now propounded in this Court, in respect of the growing poverty—”

Lord Commissioner PEPPYS.—What do you propose to prove by that?

Mr. LLOYD.—After the fine of 70,000*l.* had been imposed upon the City on the second information in the Star Chamber, negotiations were entered into between the City and the King for the remission of that fine, and the reinstatement of the City of London and the Irish Society in the Irish estates. Those negotiations were very lengthy, and appear to have assumed different forms in their progress, and this act of Common Council forms part of the negotiations in question: it related to the negotiations in question, and related to them in this respect, that the City ultimately agreed to offer to the king the whole of the Irish lands, he remitting the 70,000*l.* fine. The Irish Society, by their answer, insist upon that offer of the City of London by way of exclusion of the Companies from the right of ownership to the estates in question; we meet that argument of the Irish Society by saying, that that offer of the Irish estates was an offer made on the previous consent of the Companies of the City of London.

Lord Commissioner PEPPYS.—Then the point you propose

to prove is, that the Companies had consented to that offer being made?

Mr. LLOYD.—Yes, my Lord. “It was therefore now propounded in this Court, in respect of the growing poverty and declining estate of the City, that consideration might be taken what other course might be held that might be acceptable to his Majesty, for the composing of the differences and matters in question between his Majesty and this City, either by leaving and submitting all the City’s lands and possessions in Ireland, and all that belonging thereunto to his Majesty, disposing and by paying some moderate sum besides for their peace and quiet in the rest of the things desired by them or otherwise, as upon debate and consideration had, might be found fit and reasonable; and thereupon it is ordered by this Court, that the Right Hon. Edward Blomfield, Lord Mayor of this City, and several other persons being the committees formerly appointed by this Court to treat with the lords his Majesty’s commissioners, touching this City’s offer of 100,000*l.* for the lands and other things, together with some other persons, who are now thought fit to be added unto them, or any four of the said Lord Mayor, Recorder, and Aldermen, whereof Mr. Recorder to be one, and any six of the said commoners, forthwith meet together and take into their considerations the several matters and propositions moved in this Court, touching the foresaid business now in agitation between his Majesty and this City, and to consider some fit way to be taken by the City touching the said business; and for that the Court hath not power of themselves to make offer to his Majesty or the lords for the yielding up of the said lands and possessions in Ireland, the Companies of this City having particular interest in the same: it was therefore left to the discretion of the said committees, if they shall think fit, to send to the several Companies of this City, who are interested therein, to consider, resolve, and certify their minds and intentions therein; and the said Committees, hereby authorized as aforesaid, are to make report of their doings and opinions therein to the next Common Council.”

Mr. JACOBS.—I am sorry to have given your lordships so



much trouble in relation to this paper; of course they would not give up the lands which had been conveyed to the Companies without their consent.

Mr. WIGRAM.—That is an observation upon the effect, you know.

Mr. LLOYD.—It appears, my Lords, therefore, from that document, that the City proposing to offer to the king the resignation of the whole of the Irish estates, had, in appointing a Committee to carry on the negotiation on that basis, directed the Committee to consult the Companies thereupon for the purpose of obtaining their consent to that after being made. My Lords, the negotiation between the king and the City of London, with respect to the remission of the fine, appears never to have come to any thing; it was an abortive negotiation in consequence of the war breaking out. In the year 1641, the City of London, on behalf of themselves and several of the Companies of the City, presented a petition to the House of Commons, complaining of the judgment which had been given by the Court for the repeal of the charter: that is a most important document, on account of the statements contained in it, as to the relation in which they stood to this plantation, and also to the City of London. I do not suppose my learned friend will complain of our reading that, because it is admitted by his answer.

Mr. JACOBS.—And stated in the bill.

Lord Commissioner BOSANQUET.—It was stated by Sir W. Follett.

Mr. WIGRAM.—Yes, my Lord.

Mr. LLOYD.—I believe your lordships will not find that in the printed book. The City of London, in their petition to the House of Commons, state, “that the Corporation of the said City of London never undertook the said plantation, or as to the use of the City disbursed any money thereabouts, but that their name was only used for the better transaction of that business, and only as a means to forward the plantation, and raise monies by and from several Companies and particular persons as aforesaid, which otherwise could never have been effected. The new Corporation of the Governor and Assistants

of London being formed, to them and their successors were the premises granted by his Majesty's letters patent, under the Great Seal of England, bearing date the 29th day of March, in 11th year of his said late Majesty's reign, to the end they might distribute the same to the several Companies of the said City that had borne and were to undergo the charge of the said plantation; and in pursuance of the said intention, the said Society did, by virtue of a license from his said late Majesty, under the Great Seal of England, grant unto the twelve chief Companies of London, to the use of themselves and of such of the Companies of London as were joined with them, sundry great quantities and parcels of the said lands, tenements, and hereditaments, according to their respective disbursements, and retained in their own hands such things as were not properly divisible, for the defraying of the general works of the plantation."—In that petition, therefore, the City of London renounced their interest and claim to the lands in question, and state in distinct terms that their name was only used for the fit transaction of business; and that the persons who were really interested in this plantation were the several Companies of the City of London, who had contributed all the monies in the plantation.

My Lords, with reference to the statement in that petition, and also the statement in the petition of the City of London to the king, praying to be allowed to proceed in the election of members of the Irish Society, the City of London, and also the Irish Society, have endeavoured to get rid of the effect of those clear admissions by the City, and that they were not interested, but that the persons really interested were the Companies of the City of London, by stating that statements of that character were never made by the City of London until after the fine of 70,000*l.* had been imposed by the Star Chamber; and that it was for the purpose of evading that fine, or escaping from the sentence, that they resorted to the House of Commons; that they were only trustees for the several Companies, and were altogether without interest in the lands in question. That statement is contained in the answer of the Irish Society. In folio 309, they state "that they do not know,

and have no reason to believe that in any of such proceedings as aforesaid, it was alleged that said Irish Society were trustees for the use of the said twelve principal Companies in the said bill in that behalf named; and, on the contrary, defendants say they have reason to believe that said Corporation of the City of London, and said Irish Society, were never considered as such trustees to any further extent than hereinbefore is set forth; and that until the said City of London was aggrieved by the aforesaid fine of 70,000*l.*, said Corporation of said City never in any way alleged that they were only trustees for said twelve Companies."

In the Answer of the City of London, the statement is more explicit; they make a similar observation upon the effect of these petitions to the King and to the House of Commons. They admit, that in the month of May 1636, a petition was presented to his late Majesty King Charles the First, by the Corporation of the City of London; and that such petition was in the words and figures, or to the purport and effect in the said bill in that behalf mentioned: I say, "they believe that no entry or document exists prior in point of date to the said last mentioned petition, in which it is alleged, that the Corporation of London or the Irish Society were trustees for the said several corporate Companies; they believe that the said Corporation being well convinced of the injustice of the said sentence, and feeling themselves greatly aggrieved thereby, bethought themselves of setting up a trust, with a view to get rid of, or suspending the execution of the said sentence."

Now, my Lords, one would have supposed, if there had been any truth in that representation, that as soon as the pressure of that sentence was removed, the original claim of the City of London, supposing they had any, would have been renewed; that they never, after the pressure of that sentence had been removed, would have treated the twelve Companies as the persons solely interested in the Irish estates, and represented themselves as acting simply in the character of trustees: that we find, however, was not the case; for that in a subsequent transaction, in 1649, and during the period of the Common-

wealth, when the Irish Society had not any natural existence, the charter of James having been repealed in all the communications which took place, they referred the consideration of the whole matter of the plantation to the consideration of the twelve Companies; those documents are referred to, many of them, by the bill, and we have verified them on affidavit; they are referred to in general terms. The principal of those documents are referred to in the Answer of the Irish Society; they come out of the possession of the City of London; we have referred to them, and therefore, of course, we are at liberty to use them.

Mr. JACOB.—My learned friend will be good enough to point out which of them—which of the passages. I am sorry for this course.

Mr. LLOYD.—The first document to which I shall refer for that purpose, is on the 7th of February, 1649. “It is ordered by this Court,”—that is, the Court of Aldermen.

Mr. JACOB.—I have not one of these; you must show how you make it evidence.

Mr. WOOD.—Yes; that of the 7th of February, 1649, is in the bill.

Mr. LLOYD.—“It is ordered by this Court, that the officers (whose duty it is) shall from this Court give warning to the twelve Companies to make present returns of the persons’ names by them chosen to treat among themselves, and with a committee of Common Council concerning the Irish lands, &c. except the Company of Grocers, who have already made their return.” On the 19th of February, 1649, this also is stated in the bill, or referred to:—“Item. This day, upon a letter received from the council of state concerning Londonderry and Coleraine, it is ordered by this Court that the City Council, with Mr. Tailor, shall peruse the records that concern the City’s interest in Ireland;” and the persons therein named, “or any three of them, to report the whole matter to the Court.”

On the 7th of May 1649, there is another document, which has been referred to by the answer of the Irish Society, and has been referred to or stated by the bill, but of course that

may be used against the City of London, out of whose possession it comes:—"It is ordered by this Court, that the places chosen by the twelve Companies to treat about the Irish business, warned to meet the committee of this Court at the Guildhall on the next Friday, at eight of the clock in the morning; and that Mr. Tailor have notice to attend there at the same time." And the following document of the month of April, 1650, in his hands:—"Upon reading of a report from the committee of this Court, appointed to treat with the persons chosen by the twelve Companies concerning the Irish plantations, it was ordered by this Court that the said committee do again meet with the persons chosen by the said Companies, and jointly make their report unto this Court in writing under their hands."

Mr. JACOB.—You should see what they are writing about—that it was about the lands that had been allotted.

Mr. LLOYD.—You shall see presently certain persons were added to the said committee. "And it is also ordered, that the said Company be moved to appoint some fit person or persons to attend the Lords Commissioners of the Great Seal and the Barons of the Exchequer for carrying on this business." On the 9th of May 1650, which is stated also in the bill:—"This day the several persons who are named, and who are called committees, formally appointed to treat with the persons chosen by the twelve Companies touching the City's interests in the province of Ulster, in Ireland, did deliver unto the Court a report in writing under their hands, subscribed also by sundry of the said persons, of their proceedings therein, the tenor whereof is as follows:—According to several orders of this honourable Court, of the 19th of February and the 11th of March last, we, whose names are hereto subscribed, have had conference with the City Council and Mr. Tailor, and also with the persons chosen by the twelve Companies, touching the City's interest in Londonderry and Coleraine, and other lands in the province of Ulster, in the realm of Ireland; and we find that the city of Londonderry and town of Coleraine, and divers other lands, fishings, and customs, were by letters patent of the 30th of March 1613,

granted by King James unto a corporation erected for taking the said lands from the king for the use of the several Companies of London, who were at the charge of building the said towns and planting the said lands; and that the said towns and lands, with the fishings and customs, were enjoyed for many years by virtue of the said grant. And we also find that upon two several informations exhibited into the Star Chamber, the one 6th Car. against the City, and the other 8th Car. against the City and the said Corporation, upon pretended offences, the City and the said Corporation, after their disbursements of above 150,000*l.* upon the said plantation (whereas they were tied but to expend 20,000*l.*), were sentenced at 70,000*l.* (whereof was paid 12,000*l.* besides costs of suit, which were great), and that the said letters patent should be surrendered and cancelled." It then goes on to state,—“ And we do also find that the said Corporation, unto whom the said towns and lands were granted, did convey most of the said lands to the twelve chief Companies of London, to the use of themselves and the rest of the Companies of London. And that all, or most of them, have the deeds made by the said Corporation unto them in their custody uncanceled. And it is the opinion and desire of the persons chosen by the twelve Companies to treat with the committee of this Court touching the City's interest in the said towns and lands, that the City Council and such others as this Court shall think fit to nominate, may be instructed and authorized to assert their right and interest in the said towns, lands, and premises unto the council of state, or unto such as they shall appoint to hear the same, and to desire that they may enjoy the said lands in such manner as they did before the said sentence.” My Lords, it appears that all these reports were openly read in Court, and were approved of, and ordered to be entered into the Repertory. From their report it appears, therefore,—a report adopted by the City of London,—“ that the city of Londonderry and the town of Coleraine, and divers other lands, fishings and customs, were granted to a Corporation erected for taking those lands from the king for the use of the several Companies of the City of London, who were at the charge of

building the said towns and planting the said lands." It is impossible that any document could be more satisfactory to prove that the City of London—the Irish Society being then no longer existing, the charter of James the First being then repealed,—it is impossible that any language can be more explicit for the purpose of shewing that the whole of the lands granted by the charter of James the First were granted for the use of the several Companies who were at the charge of the plantation; and that the lands were granted to the Irish Society for the purpose of conveying them to the several Companies of the City of London.

At this time, my Lords, it is material perhaps to remember, there was no pressure on the City of London which might have influenced them. Perhaps at a former time there was, in the reign of Charles the First, while under the pressure of that sentence on the second information;—there was at that time no pressure upon the City of London that should induce them to make any representation with reference to those estates not strictly in accordance with the grant. The City of London also appear to have made a statement, after that investigation, of all the circumstances relative to the Irish Society and Irish plantation; there is, therefore, every ground for giving credit to the truth and accuracy of the statement contained in that report.

A further negotiation, it appears, was entered into upon this subject; and on the 30th of July 1650, it was ordered by the Court of Aldermen, that certain persons should "be added to the Committee formerly appointed to treat with the trustees of the twelve Companies concerning the Irish business, and the said Committee, or any seven of them, to meet weekly upon Tuesday, and to advise, treat, and conclude, not only of all matters relating to this business, but also for the reimbursement of all the monies due from the State to the said Companies of this City."

Mr. JACOB.—What is the date of that?

Mr. LLOYD.—On the 30th of July 1650, and on the 27th of July 1653.—"This day the draft of a petition intended to be presented to the Parliament, in the name of the Mayor and

Commonalty and several Companies of this City, touching the lands in Ulster in Ireland, was read, and well liked by this Court, and resolved, that the said Companies have the assistance of this Court in presenting the same; but this Court does think fit that application be first made to the Parliament for vindicating and settling the ancient good government of this City." It appears, therefore, that the City of London were willing to assist the several Companies of the City in urging their rights to the Irish estates, but they would not do so to their own prejudice; therefore they state that they thought "fit that application be first made to the Parliament for vindicating and settling the ancient good government of this City." If the mode of proceeding were clear, the City would not have said that they had no interest in the estates in question; and it is plain that they considered that the only persons interested in the Irish estates were the several Companies of the City of London. On the 9th of March 1653, it was ordered by the Court of Aldermen, "That the Committee of the twelve Companies be warned to meet together to-morrow morning at eight o'clock, about something to be proposed touching their lands in Ireland."

Mr. JACOB.—Touching their lands?

Mr. LLOYD.—Yes; "and that notice thereof be given to Captain Alderne, who is desired to be present at that meeting." My Lords, it appears therefore from this document, that negotiations were entered into after the beheading of Charles the First, and during the period of the commonwealth, with reference to the interest of the several Companies of the City of London in the Irish estates; that in the course of those negotiations, the City of London still adhered to the statement they had made in their previous petitions to King Charles the First and the House of Commons, treating themselves as trustees for the several Companies in the City of London; treating those Companies, in fact, as the only persons who were interested in the estates in question. And we find, in the course of those negotiations, a document, containing a most explicit statement with regard to the interest of the Companies of the City of London, in the whole of the lands in



question, including those lands retained by the Irish Society, and those which had been previously allotted to the twelve chief Companies; and that the Irish Society was a mere creature, a mere conduit pipe, for the purpose of having the estates conveyed to the twelve chief Companies of the City of London; and that it had not been intended that they should retain any portion of them.

My Lords, I will make one remark as to the reasons which may be given for the retaining of those estates which are called the undivided estates. Those estates consist of the town lands, the ferries, and the fisheries. The Report of Mr. Alderman Smithies and Mr. Springham recommended the allotment and division among the Companies of all lands except those called the undivided estates, and which are now vested in the Irish Society; and that those particular portions of the estates should be retained by the Irish Society, because they were not of a character fit to be divided; but they went on to say in their Report, which was adopted and approved by the Court of Common Council, that those several Companies would be entitled to the rents and profits of those estates so retained by the Irish Society. The reasons, therefore, why those estates were retained, and not divided between the several Companies, were, first, for the convenience of the thing; and, next, on account of the character of the things themselves;—but it is impossible, on reference to the charter and the articles of agreement, to find any distinction existing between that part of the estates which had in fact been retained by the Irish Society, and those divided and allotted among the several Companies. There is no distinction in the articles of agreement between the fishings and the town lands, and the lands divided among the Companies; there is no such distinction in the charter of James the First; there is no such distinction in the license granted by the king to the twelve chief Companies, to hold lands in mortmain; and that is a very material document in reference to this case: and I shall beg your lordships' attention particularly to the terms in which the license to hold in mortmain was conceived. The date of it is the 30th of September, the 13th of James the First, which was subsequent to the

charter. By that it is recited : “ Forasmuch as we are credibly informed, that divers Companies, Corporations, and Fraternities of and within our City of London, in our realm of England, in testimony of their true obedience towards us and towards the advancing of our earnest desires in the furthering of that worthy work of plantation, begun by the mayor and commonalty and citizens of our said City of London, in the city of Derry and town of Coleraine in our realm of Ireland, and other lands there, have disbursed, expended, and bestowed divers great sums of money for and towards the building, fortifying, planting, strengthening, bettering, and improving the aforesaid city of Derry and town of Coleraine, and some part of other the aforesaid lands ; and the said Corporations, Companies, and Fraternities, being willing to proceed in the said work of plantation, do intend, so far forth as to them shall seem convenient, to be at further charge for the planting, bettering, and improving of other lands and tenements, in and by certain our letters patent hereinafter mentioned, granted, or intended to be granted to the Society of Governor and Assistants of London, of the new plantation in Ulster, &c. We, therefore, willing, as much as in us lies, to effect and bring to an end (and if so it pleases God) the said pious and worthy work ; and to nourish the hopeful and happy beginning and proceedings aforesaid, begun and prosecuted out of the piety of our said subjects ; and to remove, as much as in us lies, all impediments that any way may hinder our said subjects in their aforesaid laudable intentions for the performance and finishing of the said plantation ; and to the end that they severally may be the better encouraged and enabled to proceed, perfect, and finish the same intended plantation ; and in future times reap some gain and benefit of their great travails and expenses taken and bestowed therein, have of our especial grace certain knowledge, and mere motion given and granted ” to the said several twelve Companies, full licence, power, and authority : “ that they and their successors severally and respectively, from time to time, and at all times hereafter, purchase, receive, have, take, and enjoy, such and so many of the counties, countries, baronies, cities, towns, castles, manors, lands, tenements, advowsons,

rivers, fishings, rents, tithes, services, possessions and hereditaments contained in the letters patent." By the letters patent, not only is no distinction made between the fishings and the undivided estates, and those divided and allotted, but the fishings are expressly included in the license granted by the king to the twelve chief Companies.

My Lords, the City of London have, by their answer, made a statement as to their having expended divers monies upon the plantation in question; and they state, also, that they can find no evidence of the repayment of any of the sums which they have advanced: I will refer to one or two passages, for the purpose of shewing, that all the sums they advanced towards the plantations, or in respect of the plantation; all the sums advanced by the City of London, except those they paid by way of contribution to the common fund, standing in the place of the Coopers' Company, are mere loans, and must have been repaid.

Mr. KINDERSLEY.—I think, as my learned friend has read this document, this passage should be read; my learned friend stopped at a particular place, "and granted to particular Companies, by whatsoever name, or names, or additions of names, they or any of them are severally known, full license, power, and authority, that they and their successors, severally and respectively, from time to time, and at all times hereafter, purchase, receive, have, take and enjoy, such and so many of the counties, countries, baronies, cities, towns, castles, manors, lands, tenements, advowsons, rivers, fishings, rents, tithes, services, possessions, and hereditaments, given or granted, or meant, mentioned, or intended, in or by our letters patent, bearing date at Westminster the 29th day of March, in the 11th year of our reign, to be given or granted to the Society," that is, the Irish Society, as the said Society, that is the Irish Society, or their successors, shall be willing, from time to time, to give, grant, enfeof, bargain, sell, convey, assign, alien, confirm, or release, to the said different Companies.

Mr. LLOYD.—My Lords, those letters patent, or that license to grant in mortmain to the several Companies, was not intended to make it compulsory upon the Irish Society to grant

any particular portion ; it was a mere authority to the Companies to release ; it was not intended to interfere with any prior or any subsequent arrangement, that might be come to between the Irish Society and the City of London, with reference to particular portions of land which it might be convenient to them to take : but I refer to it to shew, that in the discussion of this question no distinction can be drawn between the fishings and the undivided estates and those actually divided among the Companies. The Irish Society do not contend, and if they did, it would be a position quite untenable, that the lands the Companies possess they do not possess out and out ; they do not pretend that any portion of the lands which were divided, actually divided among the twelve Companies, were subject to any trust, but they admit that the Companies became the actual owners of the estates. Now if that be so, in respect of those lands actually divided among the Companies, they stand by the articles of agreement, and by the charter, in precisely the same situation as to those estates. If the Companies be reckoned the owners of the lands divided, it appears to follow, that they are equally so in respect of their portion of the rents and profits of those not divided. The groundwork of their claim, in the one instance, is the parties contributing to the monies forming the price of the estates purchased of the king. From the very first there was a resulting trust in those lands ; the Companies paying the purchase money to the Irish Society, the trust will result to those persons who paid the purchase monies, with which monies were purchased, not merely the lands divided actually among the Companies, but those undivided and still remaining in the Irish Society. If the resulting trust affected those which were divided, it equally affects those which were not divided ; the whole of the estates, therefore, with regard to the trust in favour of the twelve Companies, stand in precisely the same predicament.

My Lords, the Irish Society, therefore, being trustees, and of course being trustees for the twelve Companies, the question will come to this : whether they have or not committed a breach of that trust which they ought to have executed in favour of the Companies of the City of London. The breaches of trust

which I allege against the Irish Society consist, first of all, of an improvident management of the estates; and then an improper expense incurred by the Irish Society: those improper expenses consist of tavern expenses, gratuities to members, and other fees to members, for attendance in the court, and election expenses. These various particulars were entered into very fully by my learned friend, Sir William Follett; but there was one instance of improper management on the part of the Irish Society to which I should wish to draw your lordships' attention, not noticed by my learned friend:—it is the claim of the Irish Society, that they are entitled to grant leases of the Irish estates, renewable for ever; that is, leases in perpetuity on fines. In page 134 of the answer of the Irish Society, that claim is set up. It is not, therefore, a simple case of mismanagement, or breach of trust, but a breach of trust defended—a breach of trust which they contend they have a right to make. By their answer, the Irish Society admit that many years back a resolution was passed by the court of the Irish Society: they say “that the said Governor and Secretary of the said Society have, in their first schedule to their answer to the amended bill, set forth a list, which the defendants believe to be a full and true list of all such parts of the town-lands vested in them, as have been let on leases, perpetually renewable, or for a long term of years, on payment to the Irish Society of fines or premiums; together with the amount of every such fine or premium; and, save as appears by the said schedule, they deny, to the best of their knowledge and belief, that any lease of any part of the said town-lands has been granted in perpetuity, and for a long term of years.” The list is very extensive, and shews the great extent to which they have been granting in perpetuity. In folio 56 they admit that the said Society did, in the year 1733, come to, and pass such resolution, with respect to the granting of leases, as in the said bill mentioned, which defendants submit the said Society were at liberty to rescind when they thought it proper to do so. That resolution was a resolution of the Irish Society, that no leases should be granted in perpetuity. The Irish Society not merely shew, in their answer, the great extent to which leases in per-

petuity had already been granted, but they state that, although such a resolution was passed in the year 1733, prohibiting any grant of leases in perpetuity, that any future members of the Irish Society were at liberty to rescind that resolution whenever they thought proper so to do.

Mr. WOOD.—Do not you read the intermediate parts, “that at the time when such leases were granted?”

Mr. LLOYD.—My learned friend wants to draw a distinction as to what they call the new modelling of the Irish Society. They state, in their answer, that the leases granted in perpetuity, were granted when such one or more members of the twelve Companies were members of the Irish Society. Now it appears to me an extraordinary fallacy to distinguish between the members of the Irish Society and the Irish Society itself. This Court does not look upon it except as a corporate body; it does not regard the individual members. Whatever, therefore, be the constitution of the Irish Society, it makes no difference with regard to this breach of trust. All these leases, granted in perpetuity, were breaches of trust by a corporate body, and the Court can only consider it with reference to the character of the trustee; and that trustee possesses a corporate character, and can only have a continued existence. Now, if that be so, whether the members of the Irish Society were or were not individually members of the twelve chief Companies, could make no difference in the treatment of this case: but even supposing there were any thing in that, the whole argument is got away from my learned friend, by the circumstances of the Irish Society, as now constituted, insisting that they have a right to grant leases in perpetuity. They insist that they are entitled, whenever they think proper, to rescind that resolution of 1733. They shew that they, remodelled and reformed as they are, would have granted all those leases in perpetuity, which they now wish to attribute to the Society, constituted as it was before, as a breach of trust of those individual members; therefore they wilfully adopt that breach of trust.

It is with reference to that argument, as to the mode in which the Irish Society justified the manner of treating their

estates, that I refer to another passage in their answer. It is in their answer to the original bill, in folio 389: "They deny that the Irish Society had misapplied the monies, or any part of the monies, received by them since the date of the letters patent of King Charles the Second, in respect of the rents and profits of the ferries, fisheries, and town lands, or any of the hereditaments, or that the Society had improvidently managed the said town lands." Your Lordships will recollect, with reference to that, the statement which was given to your lordships by my learned friend Sir William Follett, as to the amount of expenses of the management of this estate, with reference to the annual income of the estate; and that upon the average annual income for the last eight years of 10,000*l.*, the amount of the average annual expenses of management of that estate was more than 5,000*l.* a year. It appears therefore that these gentlemen, with that fact before them, having the accounts from which that average is taken, and all the particulars contained in that account, insist that there has been no improvident management, and that there has been no misapplication of the monies received by them. Now if that be so—if these persons are so obtuse that they cannot see that there has been gross mismanagement of the estates in question, and gross misapplication of the monies they have received; it is clear that they are persons who are not fit to be entrusted with the management of the estates; and it is upon that ground among others, that we insist that a Receiver ought to be put upon these estates, and the Irish Society deprived of the power in future of misapplying the monies and improvidently managing these estates. My Lords, the Irish Society also state their inability to give full accounts of the rents and profits of the lands in question, or of the expenditure.

Mr. JACOB.—Where do they state that?

Mr. LLOYD.—In folio 446 of the Answer to the original bill, they say that "they have in the schedule hereto set forth a full, true, and particular account of the rents and profits of said town lands, as the same rents and profits have in each and every year, during the last eight years, been received or possessed by defendants, as such Society as aforesaid, or any

person or persons, by the order or for the use of said Society, including therein the septennial fines; but defendants say they are wholly unable to set forth any such account as is required by the bill of the sums of money, which, during the period in the bill mentioned, or any other period, have been paid, laid out, expended, or allowed by said Society, or any person or persons, by their order or consent, in respect of said fines, fisheries, or town lands respectively; when, and for what purposes, and in respect of which, and what particular part or parts of said ferries, fisheries, or town lands respectively, any and every such sum of money had been paid, laid out, expended, or allowed. For these defendants say, that a large portion of the expenses of the Society arose from salaries to officers, who are appointed both to manage the said property, and also to carry on the general purposes of the said Society; and that in like manner the expenses incurred by deputations of the Society who have visited Ireland are incurred, partly in respect both of the property and general purposes of said Society, and that it is impossible to distinguish or apportion such payments; and that, in fact, no distinct account has ever been kept by the Society of disbursements in respect of the ferries, fisheries, or town lands. And as regards such particulars, and also as regards the previous accounts required by the bill, so far back as the reign of his late Majesty King Charles the Second, defendants crave leave to refer to the accounts of the said Society as giving the best information in their possession." They are unable to give us the accounts, and yet refer to the accounts for information.

**Mr. JACOB.**—No; they are unable to give the particulars you ask for.

**Mr. LLOYD.**—My Lords, many of the expenses to which we have objected, and also, as we consider, the improvident management of those estates, have been continued since the filing of the bill. My Lords, the Irish Society, in answer to an interrogatory in the amended bill, in folio 57, say that they have in the second schedule annexed to their answer, "set forth an account which the defendants believe to be a full, true, and particular account of all the sums of money derived



from the rents and profits in the said bill mentioned, and expended by the Society since the filing of the original bill by said plaintiffs, in tavern expenses, or in gratuities or fees to members of the Society, and the persons to whom, and the causes for which such gratuities respectively were given." The schedule to the answer to which this refers contains these expenses :—" Paid to the several members of the said Society for attendances, 953*l.* 5*s.*; paid for tavern expenses during the same period, 895*l.* 18*s.* 1*d.*" Then there is an advance to the mayor and commonalty and citizens of Londonderry, 750*l.* Now each of those items of expenditure were clearly breaches of trust on the part of the Irish Society. With reference to the fees to members and the tavern expenses, I do not think it worth while to waste an argument; but with reference to the 750*l.* an advance to the mayor, commonalty, and citizens of Londonderry, that sum appears to have been given for the support of the magistracy of Londonderry for one year. Now that clearly was a breach of trust, and a misapplication of the rents and profits of the estates, inasmuch as by the charters of James the First and Charles the Second, abundant provision was made for the support of the magistracy of the city of Londonderry. Those charters, both of them, direct a scot and lot taxation to be made for the support of the magistracy, and various tolls and duties are to be raised, all for the purpose of supporting the magistracy of the city of Londonderry; and it did not lie within the discretion of the Irish Society to make any such grant as this, and they therefore have been applying the monies belonging to the Companies of the City of London in supporting the magistracy of Londonderry, for the support of which abundant provision is made by the charters in question.

My Lords, there is, moreover, this observation arising upon the accounts. There has been no division of any surplus rents among the twelve chief Companies since the year 1831. The original bill was filed in this case, in July 1832. The Irish Society state, by their Answer, that they have divided the surplus monies arising from the undivided estates among the twelve chief Companies up to the filing of the original bill. It appears, however, from their own account, that no division

of any surplus monies has been made among the twelve chief Companies since the year 1831, although the bill was filed in 1832.

Lord Commissioner PEPYS.—In what part of 1832 was the bill filed?

Mr. LLOYD.—In July.

Lord Commissioner PEPYS.—That is hardly six months after the termination of the former year.

Mr. LLOYD.—The accounts to which I have referred, are accounts which have been furnished by the Irish Society, and found among the papers which are scheduled to their Answer; and by those accounts which are for one year, ending the 25th of March 1832, there are no entries contained of any payments whatever of the surplus monies, although it appears in those accounts that the surplus remains in their hands. There is no entry of any division of these surplus monies among the twelve chief Companies. The same observation applies to the accounts which end on the 6th of February 1833. In them, likewise, no entry is made of any distribution of the surplus monies among the twelve chief Companies. This Society, therefore, although they think themselves justified in pursuing a course of gross mismanagement, and gross misapplication of monies in tavern expenses, and fees, and members, and so on, do not think it worth their while to make that application of the monies which is the only one they are justified in doing. They can commit a breach of trust, but they cannot perform their trust. They can spend large sums of monies in gratuities to members, in fees to members, and tavern expenses, and so on, but they cannot execute their trust by dividing the surplus among the twelve Companies. Many of those items of mismanagement have been committed since the bill was filed. They do not choose to withhold their hands from committing further breaches of trust; but although the complaint is made,—although the suit is pending in Court, they pursue the same system of misapplication which was pursued before, and which was the origin and the foundation of the filing of the bill itself.

My Lords, the expenses of management since the bill was

filed, in regard to the amount of income, are analogous to the expenses of management before the bill was filed, and which was stated to your lordships by Sir William Follett, in opening this case. Your lordships will recollect that, in opening this case, Sir William Follett stated, that the amount of the expenses of management was about one half of the annual income upon the average of eight years. For the year beginning 25th of March 1832, and ending 6th of February 1833; the year also beginning February 1833, and ending February 1834, the same proportion exists between the expenses of management and the amount of income. The salaries in Ireland from 1832 to 1833, are 591*l.* 10*s.* 8*d.*; those in England, 620*l.*; law expenses, 894*l.* 2*s.* 1*d.*; incidental expenses in Ireland, 304*l.* 12*s.* 1*d.*; those in England, 479*l.* 15*s.* 5*d.*; deputation expenses, 369*l.* 0*s.* 3*d.*; gratuity in plate in Ireland, 26*l.* 5*s.*; tavern expenses, 430*l.* 7*s.* 9*d.*; and members' expenses, 539*l.* 15*s.* The whole of these amount to 4,255*l.* 8*s.* 3*d.*, which are expenses of management. The income in that year, as appears from their accounts, was 9,396*l.* 8*s.* 2*d.* In the following year, the annual income for the year ending 6th of February 1833, was 8,922*l.*; the expenses of management being 4,255*l.* In the following year, the expenses of management were 3,092*l.*, and the income, 7,654*l.*; so that the proportion between the expenses of management and the income is pretty much the same, since the bill was filed as before, amounting to about one half of the income of the estates.

My Lords, the Irish Society have also, as appears from the affidavit which I am about to read, refused to render the twelve chief Companies an account of their expenditure.

Mr. KNIGHT.—What affidavit is that?

Mr. LLOYD.—The affidavit of Mr. Kensit, which was filed in November, 1835.

Mr. KNIGHT.—For what object are you going to read this affidavit? Is it to verify a document either admitted or denied by the answer?

Mr. LLOYD.—It sets forth several documents, which are referred to by the answer implicitly.

Mr. KNIGHT.—What is the meaning of implicitly?

Mr. LLOYD.—I will show you presently.

Mr. JACOB.—It is an affidavit about what he conceived as the reasons for doing so and so.

Mr. KNIGHT.—If this affidavit is to prove documents either admitted or denied by the answer, then I can understand it.

Lord Commissioner PEPYS.—You cannot shew a breach of trust by an affidavit.

Mr. LLOYD.—Many of those documents must be in the possession of the parties themselves. Here is a letter which has been addressed by Mr. Kensit, as the clerk of the Skinners' Company, to the Irish Society. We have given you notice to produce documents in your possession. I will give you the date of the letter, and ask you for the production; the date is the 29th of March, 1831.

Mr. JACOB.—That is in the answer, I believe.

Mr. LLOYD.—No; we ask also for the production of your letter-book, which will contain a copy of the letter addressed by the Secretary of the Irish Society to Mr. Kensit.

Mr. JACOB.—The course that is taken here by the other side is to exclude the answer, and to avoid reading it; or when they do, reading only half sentences, and trying to get in other matters to avoid reading the answer.

Mr. KNIGHT.—At this moment, your lordships know no more of the answer, or of any thing material in it, than any foreigner.

Mr. JACOB.—There never was a case more sedulously opened so as to exclude the real question in the suit.

Mr. WIGRAM.—We are not conscious of it.

Mr. KNIGHT.—The course here taken has been so extraordinary throughout, that I must call upon you to read the passages in the pleadings upon which you found your right to use this affidavit. There has been such a departure from all regularity and all practice, and all precedent, throughout this proceeding, as I have never witnessed.

Mr. LLOYD.—We call upon the Irish Society, by our bill, to set forth all documents in their possession relative to matters in the bill.—They have done so. We did not make a motion

for them to produce and leave the documents in the hands of the clerk in Court.

Mr. JACOB.—This letter is copied in the answer, and my learned friends are so determined to avoid going to the answer, that they will not read it out of that, but they are trying to get it in some other way.

Mr. WIGRAM.—Your lordships will understand me as denying all this. This letter is among those in the schedule to the answer. This affidavit is simply to verify those which are contained in the schedule to the answer. We merely verify these as being copies of the documents we have scheduled to the answer.

Mr. KNIGHT.—You should have given us notice to have the documents here.

Mr. WIGRAM.—We have.

Mr. KNIGHT.—Then produce the original documents.

Mr. JACOB.—They should read it from the answer, but then they could not have gained the object of stopping in the middle.

Mr. KNIGHT.—If we had followed up the only notice that we have received from you we must have had here three or four waggon loads, because there has been no description, and no specification. The parties must not conduct their case in such a way. The notice we have had is this :—" To produce in Court, on the hearing of the notice of motion, all and every," &c. &c. [*reads the notice*]: now, parties are not bound to obey such a notice as that. If it had been told us specifically, that you wanted any particular papers, here they should have been. Of course your lordships see, that this affidavit is a mere excuse to bring in certain collateral facts.

Mr. JACOB.—It is a mere attempt to avoid reading the answer.

Mr. WIGRAM.—We have it all in the schedule.

Mr. KNIGHT.—We have said from the beginning, that if you point out any documents that you want, they shall be here; but that has been refused. Any thing beyond your general notice, with which it was impossible to comply, has been refused.

**Mr. JACOB.**—If my learned friends had read the answer they would have read themselves out of Court long ago.

**Lord Commissioner PEPYS.**—There cannot be any doubt about the practice. Here is a document admitted to be in the answer. In the ordinary course, except that is departed from for convenience, that document should be deposited. And if it is not deposited, you must give the other party notice of what you want to have deposited, and not a wholesale notice like that.

**Mr. WIGRAM.**—Suppose all those had been produced, we might have selected any document we pleased, we read them without any notice at all; therefore, there is no allegation of surprise by this course of proceeding.

**Lord Commissioner PEPYS.**—It is only convenience that I am alluding to.

**Mr. WIGRAM.**—But the fact is, that there is no practical inconvenience in what we are doing; this is a letter that passed just before the proceeding.

**Lord Commissioner PEPYS.**—Except that you can hardly expect them to have every document in Court.

**Mr. WIGRAM.**—These are the introductory documents before the bill was filed.

**Mr. KNIGHT.**—You shall have to-morrow morning every document that you will point out as wanting, as we have repeatedly offered to you, and you yourselves have had full and unlimited inspection of all our documents before the suit, as is sworn. The fact is, it is a mere excuse to bring in the affidavit.

**Mr. WIGRAM.**—That is a mere insinuation.

**Mr. KNIGHT.**—Every body sees it.

**Mr. WIGRAM.**—I deny it: we are putting forward the case we wish to stand by, and we do not wish to introduce any thing that will not bear upon the case.

**Mr. KNIGHT.**—If you will give us notice this evening they shall be produced.

**Mr. JACOB.**—The letter which Mr. Lloyd mentioned is in the answer.

**Mr. WIGRAM.**—It is also in the schedule.

Mr. KNIGHT.—You shall have it to-morrow morning. Now you have told us, for the first time, that you want that particular document.

Mr. WIGRAM.—Perhaps the better way will be, if Mr. Lloyd states the documents he wishes to read, that they shall be sent for, and they may be read *de bene esse* now.

Mr. KNIGHT.—No; we will not take the affidavit.

Mr. LLOYD.—I will state what I want from the affidavit.

Mr. WIGRAM.—Mr. Knight is under a mistake.

Mr. KNIGHT.—It is from the information of Mr. Wood, who is here present, that I get it.

Mr. LLOYD.—We want a letter of the 29th of March 1831; the Letter-book of the Society containing the Secretary's answer to that letter, of the 30th of March 1831; a letter from the Cloth Workers' Company of the 12th of January, 1828, to the Irish Society; and the Letter-book containing the answer to that letter, and which answer is on the 2d of February 1828; and the following extracts in the Court-books of the Society, 8th of November 1676.

Mr. KNIGHT.—We have the Letter-book here, and the Court-book here, as it happens. Will you hand up the Letter-book to Mr. Lloyd?

Mr. LLOYD.—Have you got the letters?

Mr. KNIGHT.—They may see every thing that we have got, if they will only tell us what they want.

Mr. LLOYD.—An extract from the Court-book of the 12th of October 1677.

[*The Letter-book was shown to Mr. Lloyd.*]

Mr. LLOYD.—It is useless to read the answer without reading the letter.

Mr. JACOB.—They cannot read the answer without reading the letter; but they have the letter in *hæc verba*, in the answer itself.

Mr. LLOYD.—We want the letter of the 12th of October 1677, and the 15th of November 1677.

Mr. KNIGHT.—We understand Mr. Wigram to say, that you would point out the documents you meant to use in evidence.

[*The Court-book of 1676 was shown to Mr. Lloyd.*]

**Mr. LLOYD.**—We want an extract from the case submitted to counsel in August, 1715. I understand from my learned friend, Mr. Knight, that these letters may be read from the affidavit, though I had not meant to do more than to read the documents themselves; and not to read the affidavit. I understand from my learned friend that these documents may be read?

**Mr. KNIGHT.**—What letters are you going to read?

**Mr. LLOYD.**—The first is a letter from Mr. Kensjt, Secretary of the Irish Society, 29th March, 1831, to the Governor and Assistants of the Society.—“ Gentlemen, a meeting having been held between several of the twelve chief Companies of the City of London, regarding their common interest in the property under the management of your Society, and it having been deemed right that each Company should be furnished with an account of the receipt and expenditure thereof,—I am accordingly directed by the Skinners’ Company to apply to your Society, and to demand a clear and explanatory account of the receipts and disbursements of your Society for five years, terminating at the 25th March 1830, or to the latest period at which such account can be actually made up, together with an account of such arrears of rent as remain unpaid, and all and any charges which may be outstanding against the said Society.” To that letter this answer was received from the Secretary of the Irish Society, 30th March, 1831: “ Sir, I acknowledge the receipt of your letter of the 29th instant, which has been this day laid before a Court of Assistants of the Irish Society; and by them referred to the Committee to consider and report thereon.” We have, however, no report among the documents.

On the 12th of January 1828, there was this letter written by the clerk of the Cloth-workers’ Company to the Irish Society: “ Sir, on the 5th of May 1825, an application was made by the Cloth-workers’ Company to the honourable the Irish Society for a general statement of their accounts. The Cloth-workers’ Company were then given to understand that a deputation of the Society had been appointed to take into consideration and make a report upon the subject of the



accounts; and that when the deputation arrived from Ireland such report would be made to the Society, and a communication forwarded to the Company on the subject. 'The Cloth-workers' Company taking it for granted, from the length of time elapsed, that the Irish Society must now be prepared to furnish the same, beg leave to request that the said accounts may be forwarded to them forthwith."

To this letter this answer was returned by the Secretary of the Irish Society on the 2d of February 1828:—"Sir,—I beg leave to inform you that the subject of your letter of the 12th of January, on behalf of the worshipful Company of Cloth-workers, has been fully discussed by a Court of Assistants of the Irish Society, who, considering the origin and object of the institution, and the manner in which the funds and revenues are constantly applicable under the perpetual management and direction of representatives of the twelve chief Companies of the City, have directed me to inform you that they see no good cause, for admitting any innovation in the established rules and immemorial practice which have governed their proceedings. I am also desired to add, that it is from the Society's firm conviction that their sanctioning any deviation in the mode of conducting their affairs would be productive of inconvenience without answering any beneficial purpose, and not with the intention of withholding useful information, or evincing the least disrespect towards the parties requiring it, that they have formed this resolution." In this letter, therefore, the Irish Society recognised themselves as being, what in fact they are, representatives of the twelve chief Companies, and they state that although they do not wish to withhold useful information to those whom they represent, they nevertheless refused to give such information.

Mr. KNIGHT.—Do not say so; that is an assertion contradictory of the answer.

Mr. LLOYD. — I will read the letter again. "I am also desired to add, that it is from the Society's firm conviction that their sanctioning any deviation in the mode of conducting their affairs would be productive of inconvenience without answering any beneficial purpose, and not with the intention

of withholding useful information, or evincing the least disrespect towards the parties requiring it, that they have formed this resolution." That resolution was to refuse the application of the Cloth-workers' Company for the account. Now whatever the answer says upon that subject, I think that this being the fact, and the other merely a representation,—as we assert a misrepresentation,—but this being the fact itself, establishes conclusively that they have refused to give an account to those whom they themselves acknowledge that they represent, stating that they do not do it, however, with the intention of withholding useful information. The useful information, however, is withheld from those who are entitled to require it, and entitled in the character of *cestui que* trusts to have the accounts of those estates delivered to them by the Irish Society. My Lords, that shows that the Irish Society have refused to render proper accounts to those whom they represent; and whether that fact be or be not denied by the answer is immaterial, because it appears by the very transactions that took place, that these accounts were in fact refused by the Irish Society.

My Lords, there are some few documents which, in consequence of the City now appearing upon this motion, we are entitled to produce, and which it will be necessary to produce for the purpose of meeting the case as it stands against the City of London. The documents which I shall produce now are taken from the records of the City of London.

Mr. KNIGHT.—New evidence against the City of London from their records?

Mr. LLOYD.—On the 14th July, 1609, there is an error in the Repertory.

Mr. KNIGHT.—This is a motion for a Receiver upon me, that I may pay money into Court.

Mr. LLOYD.—I am not reading this against you.

Mr. KNIGHT.—The only motion before the Court is one against the Irish Society.

Mr. WIGRAM.—But the City of London, by their answer, insist that they have an interest which entitles them to oppose the application; we are therefore now bound to put in such

evidence as we mean to rely upon for saying that they have no such interest as they claim.

Mr. JACOB.—Have you heard what interest they claim?

Mr. WIGRAM.—That is no question now. The City of London have appeared here, and opposed the application upon the ground that they have an interest in opposing the application. We therefore now merely put in these documents, which we say put that matter at rest. This is a preliminary objection, on the part of a party against whom we say this evidence does not apply.

Lord Commissioner PEPYS.—For any thing we know, the City of London may say that your clients are trustees, but they are trustees for them. We have no information at present what the City of London do claim.

Mr. LLOYD.—Many of those documents are documents which may be used against the Irish Society also, for this reason, that many of them bear a date prior to the incorporation of the Irish Society, by the charter of James the First. The Irish Society, as appears from all the documents that have been produced, were, in fact, the mere creatures of the City of London, emanating from them, arising out of their suggestion; that suggestion adopted by the king when he incorporated the Society by the charter.

Lord Commissioner PEPYS.—I understand you to use them only against the City of London.

Mr. LLOYD.—In consequence of Mr. Knight's objection, it seemed desirable to lay some foundation upon that ground.

Lord Commissioner PEPYS.—We are of opinion that you are entitled to read them, for the purpose of shewing that the City of London have no such interest as they claim.

Mr. LLOYD.—That will satisfy me.

Mr. KNIGHT.—Your lordship will take a note as to the circumstance that the documents now tendered are not used as evidence against me.

Lord Commissioner PEPYS.—I have done so.

Mr. KNIGHT.—Your lordship will see that it is only attempting to do that indirectly which they ought to do directly.

**Mr. WIGRAM.**—Mr. Lloyd expressly said, that we do not intend to use it as evidence, except against the City.

**Mr. KINDERSLEY.**—My learned friend is reading from some paper; I want to know where he gets it, or what it is.

**Mr. LLOYD.**—These are verified and examined copies of the documents in the possession of the City of London, and referred to in their answer.

**Mr. KINDERSLEY.**—I am afraid I must put you to read the passage; with respect to at least half the documents you have been referring to, I have been as completely in the dark as if I had never heard the name of the Irish Society and the Skinners' Company; and therefore I am obliged to put them to refer to the passages of our answer, to show what document it is, or how it is mentioned.

**Mr. LLOYD.**—I can only say, that my learned friend must have been very ill instructed. They admit that they have now in their possession various books, papers, documents, and writings relative to the matters in question, all of which are open to the inspection of such of the said complainants, as are members of the Corporation of the City of London.

**Mr. KNIGHT.**—There is no schedule.

**Mr. KINDERSLEY.**—There is no schedule.

**Mr. LLOYD.**—They admit that they have various documents in their possession, relative to the matters in question, and that they are open to the inspection of any members of the Skinners' Company, who are members also of the Corporation of the City of London.

**Lord Commissioner PEPPS.**—Can you move upon such an Answer as that? If you want any particular document, you must specify it.

**Mr. KINDERSLEY.**—We are perfectly willing to give them an inspection of every document they wish.

**Mr. LLOYD.**—I am quite surprised at this objection by the City of London; they object to the reading of their own records. My object is principally to show, that all the sums paid by the City of London were paid by them by way of loan, and directions made with respect to some of those sums, for repayment of them out of the sums levied by way of contribution of the Companies

for the work of the plantation ; they therefore have contributed, because every sum of money which they paid was repaid by way of loan ; and there is evidence to show that those loans were repaid, or that they had the power of repaying themselves. There are various other parts of the Answer of the City of London, in which they refer to their records. My Lords, I am sorry to be taking up the time of the Court upon this question, as we used these documents against the City alone ; and in all probability, my learned friend Mr. Knight will open the case for the Irish Society, against whom they are not to be read : perhaps your lordships will allow us to look further into the Answer of the City, and to produce those documents before the City of London are heard.

Mr. KNIGHT.—That I entirely object to ; we must have your case out before I begin.

Mr. LLOYD.—We are taken by surprise. These persons put in what clearly is an insufficient Answer ; and we did not expect from a Corporation, such as the City of London is, to be met by such a technical objection as this is ; they must know that this document came out of their possession.

Lord Commissioner PEPPYS.—I am afraid we must proceed according to the ordinary rule ; the plaintiffs must have had the means of knowing how far the admission in the Answer gives the plaintiffs a right to use the documents ; if they have not taken the usual course, they must abide by the consequences.

Mr. LLOYD.—It would have been an oppressive proceeding, to call upon the City to set forth all the documents ; we should have been met by abundant complaints, if we had taken that course, and now we are met by this formal technical objection. I trust, therefore, that your lordships will allow us to look more carefully into their Answer, for the purpose of seeing whether there is not such an admission contained in this Answer, as to allow us to put the documents in.

Mr. KNIGHT.—I object to that motion being split in this way.

Mr. KINDERSLEY.—So do I for the City.

Lord Commissioner PEPPYS.—We cannot depart from the

usual course ; there is no reason why this case should be split.

Mr. KNIGHT.—Unless your lordships compel me, I should decline going on till I know that their case is concluded.

Mr. LLOYD.—The City, in various parts of their Answer, do refer to documents in their possession ; they say, that they have now in their possession, various books, papers, documents, and writings relative to the matters in question, all of which are open to the inspection of such of the said complainants as are members of the said Corporation of London. And these defendants say, that the same have been inspected by, and extracts therefrom have been furnished to, the solicitor or clerk of the said complainants. Now we produce the extracts, which have been so furnished to the clerk of the plaintiffs, by the City of London itself. These are documents, therefore, which have been furnished by the defendants themselves to the plaintiffs ; and they refer to these documents expressly by their Answer, with reference to the matters contained in the Answer, and to the suit pending. It does appear to me, that as these extracts were furnished by the defendants themselves, and referred to also by their Answer, that we are entitled to use these extracts upon this occasion.

Mr. KINDERSLEY.—What the value of those documents may be I do not know. I am taking this course entirely in the dark with reference to that question ; but, of course, as your lordships have observed, this case must be conducted like all other cases. The plaintiffs were entitled to have required us to set forth the schedule of those documents. If we had done so, these documents so scheduled would have been part of the answer, and they would have them read ; but they do not think fit to take that course. My learned friend comes here and says, You have not set forth the schedule ; but although we did not think fit to except against your answer, we contend that we are entitled to read these documents upon the ground that you have furnished to us some extracts of those documents.

Lord Commissioner PEPPYS.—I understand that they propose to read the very papers you furnished them with.

Mr. KINDERSLEY.—So I understand ; of course, the extracts

we furnished them with are no part of the answer. There is a mention of them in the answer in this way, that we have furnished some extracts to their clerk ; but they are no part of the answer. It is not like referring for greater certainty to the document itself, which is the usual way in which a document is so connected with the answer, as to be read as part of the answer ; but it is merely stated that some extracts were furnished to the clerk of the plaintiffs, being extracts from documents in our possession. Now, upon the admission that we had certain documents in our possession relating to the matter in question, if they had not an interrogatory for that purpose, they should have inserted an interrogatory requiring us to set them forth in the schedule ; but, surely, the omission to require them and schedule them does not entitle my learned friend to read the documents from which we have given them extracts. They are no part of the answer in such a way as that the plaintiffs can read them. The whole course is so entire a deviation from the ordinary practice of the Court, that it really seems as if my learned friend considered that, because this was the case of the Skinners' Company and the Irish Society, it was to be dealt with differently from all the ordinary cases. I submit, that the same practice must govern this case as governs the cases between man and man, and that, as there is nothing whatsoever which can make these documents part of the answer, he has no more right to read them than if they had not been mentioned.

Lord Commissioner PEPPYS.—Does the bill contain any statement, with regard to those extracts ?

Mr. WIGRAM.—It calls for the general production of all the documents.

Mr. KINDERSLEY.—As I understand, none of those documents have been thought of by them, in framing their bill. If they thought them material, they should have amended their bill, and introduced a statement of them.

Mr. KNIGHT.—They have amended.

Mr. KINDERSLEY.—They have amended, but not so as to introduce these.

Mr. WIGRAM.—The point is reduced to a very narrow

compass; and it appears to me that we are entitled to have these documents. The City, in one part of their answer, set forth a document dated July 1609, and then they go on to say:—"But for their greater certainty as to the above extract, from the records of the said City of London, as well as to all other extracts hereafter inserted therefrom, or other matters appearing by the said records, and hereafter referred to, they crave leave to refer to such records, or proper copies, when produced." Now this would stand upon the same footing, if we show that it belongs to matters referred to in the answer that would put it upon this footing, that, as to all matters contained in the answer, they refer to the records of the City. We should, therefore, be entitled to refer to any record which goes to any part of the charge in the bill. Then, in answer to the charge in the bill, relating to the books, papers, and writings, they say:—"That many of the ancient records, books, documents, papers, and writings, belonging to the Corporation of London, relating to and containing, as these defendants believe, entries relating to the said plantation, were destroyed by fire in the year 1789, and lost, by reason whereof these defendants have been unable to set forth, otherwise than as aforesaid, the facts and circumstances inquired after by the said bill; and in relation thereto they admit that they have now in their possession various books, papers, documents, and writings, relative to the matters in question, all of which are open to the inspection of such of the said complainants as are members of the Corporation of London." They "say, that the same have been inspected by, and that extracts therefrom have been furnished to, the solicitor or clerk of the said complainants, but they object to the removal of the books." Now if they had set forth their schedule, it must of course have contained those papers of which these are extracts. All that we seek now to do is, to read these extracts which they have furnished us with.

Mr. LLOYD.—The most material documents which I wish to produce, are those showing the payment of the advances made by the City of London, and which contain evidence of the repayment of those advances out of monies contributed



by the Companies. The passage which has just been read by Mr. Wigram is to this effect:—They say, that “for their greater certainty as to the above extracts from the Records of the City of London, as well as to all other extracts hereinafter inserted therefrom, or other matters appearing by the said records, and hereinafter referred to, they refer to such records.” Now, having referred to their own records in support of all the matters hereinafter referred to, I show that the documents which I intend to produce relate to the matters to which they have referred by their answer; I am entitled through the statement in their answer to produce those documents. Now, with respect to the payment of monies, the statement contained in the answer of the City of London as to the payment of money by them is in these words:—In folio 94, they state “that the several Companies, or any of them, were in fact the undertakers of the colony or settlement, so as aforesaid proposed by or on the behalf of his said late Majesty, and which was afterwards undertaken on the terms mentioned in the aforesaid articles of agreement, or that they supplied the whole, though the defendants admit, that in manner, and under the authority and circumstances aforesaid, they supplied a large part of the monies which were necessary for the planting and establishing of such colony or settlement, and for carrying into effect the articles of agreement; for these defendants say, that the records of the said Corporation show, and the defendants believe the fact to be, that besides the said two sums of 300*l.* and 200*l.*, hereinbefore mentioned, to have been advanced and paid by the Chamberlain of the said City of London for defraying the expense of the Brewers, the said Corporation expended very considerable sums of money towards the accomplishment of the said plantation or settlement; and that among other sums of money in or about the year 1612, the said Corporation paid out of their own funds 420*l.*, or thereabouts, being the amount of the tax imposed on the Coopers and Brown Bakers as hereinafter mentioned; and that the said Corporation were at an annual expense for many years of 60*l.* per annum towards the maintenance of Culmore Castle, and of 20 marks per annum by

way of salary to a schoolmaster at Londonderry, being the salary for that purpose required by the articles of agreement." They refer therefore in this passage to the sums which have been advanced by the City of London; and that, being a matter stated in their answer, comes within the expressions contained in the former report as a matter herein referred to; that is, all advances made by the City of London for the purposes of the plantation, constitute a matter hereinafter referred to. It is with reference to all matters afterwards referred to in the answer that the corporation refer to their own records. Upon that reference contained in the answer, and upon this statement, as to the sums of money advanced by the City of London, I conceive that we have a full right to read those particular extracts which I have mentioned. But there was an affidavit filed, which shows that the extracts we have verified were the extracts furnished to the plaintiffs by the defendants, the City of London. This is one of the questions which I conceive is now in discussion under the reference contained in the last page of the Answer of the City, in which they state that their records have been inspected by, and that extracts therefrom have been furnished to, the solicitor or clerk of the plaintiffs. Then this affidavit verifies those extracts, as being the extracts which have been so furnished to the clerk or solicitor of the plaintiffs, Thomas Glover Kensitt, of Skinners' Hall.

**Mr. KINDERSLEY.**—I object to your reading the affidavit.

**Mr. LLOYD.**—Here is the passage in the Answer, in which the defendants state, that their books and documents have been inspected by the plaintiffs, and that extracts from those books and documents have been furnished to the plaintiffs, referring to those extracts, if we are able to certify what we now produce. Were the extracts thus furnished, we are entitled to use them in the present motion against the City of London; and there is a reference contained in the answer to the extracts thus furnished, and a complete identification of those documents.

**Lord Commissioner PEPYS.**—You do not ask for it upon the ground that it is a document which the plaintiff has an

interest in, but upon the ground that the defendant has made it part of his case. Now I do not see how you make that out: he states that the plaintiff has had the inspection of the documents, and that extracts from the documents have been furnished; but how do you make out that the defendant so incorporates that fact with his answer, as to make it part of his answer?

Mr. LLOYD.—That is the former part.

Lord Commissioner PEPYS.—That is, generally, that there are in the records certain documents; he does not incorporate the document in question as part of the answer.

Mr. LLOYD.—I would wish that your lordships' opinion should be taken rather upon this part of the answer which I referred to before. The City of London set forth the document from their records of the 1st of July 1609, and they say, "but for their greater certainty as to the above extract from the records of the City of London, as well as to all other extracts hereinafter inserted therefrom, or other matters appearing by the said records, and hereinafter referred to, these defendants crave leave to refer to such records, or proper copies thereof."

Lord Commissioner PEPYS.—Can you say that the abstract appears from the record itself?

Mr. LLOYD.—Now one of the matters appearing by the records, and afterwards referred to by the answer, is the matter of the question of the sums advanced by the City of London, that being a matter afterwards referred to in the answer, and appearing by the records and the City. As to all such matters referring to their records, we are entitled to produce this record as being a fact embodied in the answer. They refer to it in their answer, in support of all matters contained in the answer; and these are extracts from the records, and properly verified.

Lord Commissioner PEPYS.—The question is not whether the substance of the paper is referred to in the answer, but whether the paper itself is referred to in the answer. It is clear that they have not done so. They have referred to the document as containing the substance of what is referred to, but they have not referred to the document itself.

Mr. KINDERSLEY.—I believe your lordships took a note of the first of these documents which my learned friend was going to produce; if so, that will now be rejected.

Mr. LLOYD.—In the absence of these documents, which we are unable to adduce upon the present motion, I think that even upon those which we have produced, and against which no exception can be taken, this case is abundantly made out; namely, that from the very first the Companies of the City of London were persons who were consulted and referred to for the purpose of carrying into effect the proposal of the King to the City, for planting part of the province of Ulster,—that although the Court of Common Council and the City of London appear to have been parties, and to have directed a great variety of acts with reference to the conducting of this plantation, and to levying monies for the purpose of carrying it into effect,—they (the Court of Common Council) appear therefore to have acted in some degree as independent of the Companies; yet the whole of these acts and proceedings on the part of the City are explained by one single sentence, which is contained in the petition of the City to King Charles the First; “that the several Companies of the City of London made up the body of the City,” &c. (the several Companies of the City making up the body of the City.) The acts of the Corporation of the City of London, and the acts of the Common Council, were in fact nothing more or less than acts of the several Companies themselves. That therefore gets rid of some apparent difficulty with reference to the right of the Companies of the City of London, to insist that they are the persons, and the only persons, entitled to be the *cestui que* trusts to the Irish estates. That the Companies of the City of London having in fact contributed the whole of the monies, would by presumption of law be entitled to the beneficial interests in the lands so purchased; that the Irish Society, notwithstanding the obvious trust which is imposed upon them in favour of the Companies, have committed various breaches of trust which is imposed upon them in favour of the Companies; have committed various breaches of trust, by misapplying monies in expenses against the consent of the Companies; expenses, continued since the bill filed, and

therefore expenses continued since the absence of consent was manifested by the filing of the bill. They therefore having committed a breach of trust before the filing of the bill, and having continued those breaches of trust subsequent to the filing of the bill; there being no hope therefore of amendment, we submit that we are entitled to come to this Court for a Receiver, as against these estates, and for the payment of money into Court of the surplus funds.

My Lords, one of the principal motives for applying at this period, instead of waiting till the hearing of the cause for a Receiver, is this, that the Irish Society has, in fact, no other property of its own. There is no means whereby any responsibility, which the Irish Society may have incurred with respect to any such breach of trust, may be met;—there is no other property to which we can look for recompensing ourselves. Now this is a very material point in this case, with regard to the time and the manner in which this application is made to your lordships; and it is also very material, in the same way, to consider the annual amount of income of these estates, amounting now, upon the average of the last eight or ten years, to between 8 and 10,000*l.* a year, one half of which has been expended in acts of mismanagement on the part of this Society. The amount therefore of the property in dispute; the fact of the Irish Society not having any property to which we can look to reinstate us in our rights; and the facts of the Irish Society continuing their system of mismanagement since the bill was filed; justify us, it seems to me, the plaintiffs in this case, in making the motion for a Receiver, and not following what might otherwise have been considered the regular course of proceeding, waiting till the hearing of the cause. My Lords, if the Irish Society had, upon the filing of the bill, ceased from these misapplications; if they had continued the payment to the Companies of the surplus amount of rents in their hands; we should be hardly justified, under such circumstances, in applying to the Court for a Receiver. But the very reverse of this being the fact; and the Irish Society being, in fact, except as regards these estates, absolutely insolvent, will, I hope, justify us in the judgment of this Court in applying for a Receiver under the present circumstances.

Mr. KNIGHT.—My Lords, if there are any of the Companies served with this notice of motion who desire to be heard in support of it,—now is their time to be heard, or, of course, not at all.

Mr. WHITMARSH.—I appear for the Butchers' Company; and I am instructed to inform the Court, that they do not wish to interfere in the case, and are ready to submit to any order which the Court may think proper. As respects the Tylers and Bricklayers' Company, I am instructed to state, that they have no objection, if the Court think it expedient, to pay the money into Court; but they do not wish a Receiver to be appointed, being of opinion, that the management of the Irish estates is now well conducted by the Irish Society.

Mr. BLUNT.—I appear for the Scriveners' Company. I am instructed to say, that they wish to leave the case in the hands of the Court.

Mr. LLOYD.—Perhaps your lordships will allow me to supply an omission as to the amount of money which we ask to be brought into Court for that purpose. I merely refer to the schedule annexed to their Answer, which shows that that amount is in their hands.

Mr. KNIGHT.—My Lords, I am now, therefore, to take it for granted, that every party who appears in support of this notice of motion has now been heard; because, of course, after I shall have begun, no party can be heard in support of this notice of motion otherwise than in reply. Of course, I cannot limit those that appear in opposition; but I have a right now to limit those who appear in support of the motion;—and I therefore take it for granted that there is no party that desires to be heard in support of this notice of motion beyond those that have been heard.

My Lords, I have the honour of appearing before your lordships on behalf of the Irish Society,—a Corporation which your lordships know was originally founded by King James the First in the year 1613, and has therefore existed for more than two centuries, in opposition to an application—an interlocutory application—the direct and avowed object of which is the suspension, the stopping,—I may say the extinction of that body's

functions, powers, and means of acting ; which has for its direct and avowed object an entire change and reversal of a course of proceeding and dealing with respect to their functions, powers, and property, which has uniformly existed and continued during a period of more than two centuries.—All this your lordships are asked to do upon an interlocutory application ; you are asked to do it in a case in which, to state the argument at the lowest, it is, at the very least, a serious question, debateable, and to be debated, whether the public represented by his Majesty, and the proper officers of his Majesty, are not most materially concerned in the discussion, in respect of the public interest. Such a question upon an interlocutory application your lordships are now asked, and deliberately asked,—because other defects in respect of parties for the present purpose have been supplied,—you are now deliberately asked to hear this question argued, which properly, I humbly submit, you cannot do ; and to decide it, not upon an information, but upon a bill of a private party, in respect avowedly of merely and simply a private right ;—and you are asked to do it without even the form or ceremony of making either the attorney-general or the solicitor-general, whether of England or of Ireland, a party to this record ; not, I say, a party to the motion merely, but not even a party to the bill upon which this motion is granted. And your lordships must hear by me, and by other parties equally unauthorized and incapable for a complete discussion of the subject,—you must hear a discussion, whether the Crown, by its attorney-general, or the attornies-general of England and of Ireland, is not a party necessary to be heard upon questions such as it must be my duty to attempt to discuss ;—you must hear all this argued in the absence of the Crown, and of every one of its officers.

My Lords, if I had said no more than this,—and if I had sat down, having made these observations to your lordships, supposing them to be founded in truth, and accurate as I know them to be, and as by this time your lordships must be aware,—I believe, that I should have sufficiently discharged my duty to the interests I have to support. But character and conduct have been attacked in this matter to a very great extent. Of

the interests confided to the Irish Society, they are, in a sense, to a great extent, the public guardians, and they have felt themselves bound, therefore, to instruct their counsel to meet the case fully in all its bearings, so far as those counsel can. It is therefore, and therefore only, that I shall proceed to address myself to the merits of this present application;—it is one of which I firmly believe, and deliberately say, the success is absolutely impossible, even if all the merits of the case were as clearly with my learned friends who have been heard in support of the application, as they would have your lordships to be impressed with the belief that they are.

In addition to what I have stated, it is impossible to disguise the fact, that the success of the present application would be a decision of the cause; because, if the present application succeeds, it can only be upon the principle which can decide the cause most important in value, most important in principle, as it is without evidence regularly gone into, and without that species of discussion which the Court expects before it finally decides upon important interests.

My Lords, the application which I appear to oppose is, that a sum of several thousand pounds, being the entire balance admitted by the answer of the Irish Society to be in their hands for all the Companies for which they are established, may be paid into Court;—of course, therefore, for the purpose of stripping that body of every shilling of available property, and for the purpose of preventing the possibility of future acting;—and therefore I deliberately used the words *SUSPENSION*, *STOPPING*, *EXTINCTION*, at the commencement of my remarks to your lordships. It has the further object of putting a Receiver upon the rents of all their estates, depriving them therefore, for the present and for the future, as I have already said, of all means of acting; virtually, therefore, extinguishing the Corporation, because the distinction is futile between the extinction of a Corporation in word and form, and taking a step which prevents the possibility of that Corporation acting.

Now, as I have said, all this is to be done by an interlocutory application, and was intended to be done upon an application, served only upon the Irish Society, their Presi-



dent and Secretary ; and it has been unwillingly and reluctantly that the plaintiffs have brought in as parties to the present discussion those other persons materially interested in the subject matter, whether as visitors or as persons entitled to the benefit of those estates, and in the objects for which the Society was constituted.

My Lords, I allude to the original frame and form of this motion, for the purpose of supporting the assertion I am about to make of its real character and object,—for the purpose of showing that they are not merely words of course, when I assert, that the present application is a mere speculation, for the purpose of enabling this (SKINNERS') Company to try whether they will or will not proceed with the suit. It was thought that they might discuss that question cheaply, and at small risk, in the absence of the numerous persons materially interested; and that your lordships' opinion upon a motion to which the Irish Society were the only parties, might afford them light as to their future progress, without exposing them to that risk to which every plaintiff, before he embarks in a suit, ought to be willing honestly to expose himself—the risk of contending the matter in the regular way, with all the parties interested.

Before I proceed, I wish to call your lordships' attention to a few of the dates of the present proceeding. I desire to be considered as imputing no blame to the delay in hearing the motion. My observation as to dates will not extend beyond the date of the notice of motion.—The time that has elapsed since is less material in comparison.

The original bill was filed on the 16th of July 1832;—filed, as your lordships will presently be aware, when you come to know something of that answer of which at present you know substantially nothing;—filed after the fullest opportunity of examination, and examination, in fact, had by the present plaintiffs. The answers of the Irish Society, their Chairman, their President and Secretary, were filed on the 30th of January 1833. One at least of those answers was excepted to, and an answer to the exceptions was filed on the 7th of October 1833; a very short answer of three sheets. Now the slumber of the Skinners' Company after that further answer was not so

long as I thought, for it only endured till May 1834, when they amended the bill. The answer to the amended bill was filed on the 17th November 1834. Now the circumstances of other parties being added by that amendment they cannot allege as an excuse for delay, because your lordships are aware that the notice of motion was, in the original form, a notice of motion against the original defendants only. Nevertheless, the present notice of motion was not given till the 10th of April 1835. After all these proceedings, the date of the present notice of motion was the 11th of April 1835. Now these plaintiffs cannot allege,—they never have alleged,—that when the original bill was first filed, they were not fully aware of the nature of the case.

Now if these parties had proceeded with ordinary care,—with ordinary dispatch, with any degree of reasonable diligence,—their cause might have been heard by this time. Many causes in which I have been engaged, and in which all of us have been engaged, with evidence on both sides, in which the bill has been filed,—filed at a later period,—have been adversely heard and disposed of. It is their own election, therefore, that they have not before now brought this cause to a hearing; and at this moment I am told—and upon this I will beg my learned friend Mr. Wigram to correct me if I am wrong—not a replication has been filed in the cause. At all events the cause has not been set down, and my clients' instruction is, that not a replication has been filed in the cause.

Now, my Lords, it is upon a cause of such a description as I have mentioned,—involving interests such as those which have been brought under your lordships' attention,—involving questions of the most complicated and difficult, and in some degree novel nature, in which your lordships are asked to suspend—and virtually to destroy—a Corporation which has existed for more than two centuries, and to act suddenly and effectively against a reverse of practice of more than two centuries. It is an application of that description, under all the other circumstances which I have already brought under your lordships' attention, that you are now called upon to hear, and to act upon by way of interlocutory application. The

only object of thus employing your lordships' time, which is the time of the public, being—to enable the Skinners' Company and their officers to feel their way, and to ascertain whether it will be expedient to incur the further risk of carrying their own suit to a hearing. That is the purpose for which your lordships' time has been employed for three or four days, and is likely, I suppose, to be employed as many more. The motion is one of impossible success, independently of its merits; but as the costs of the present application must mainly depend upon the merits, and as the Irish Society are a public body, and have great public interests to support, into those merits I must go.

My Lords, an observation was made by my learned friend Sir W. Follett, that as to any sums really had out for the benefit of Ireland, (I think that was the expression,) for public purposes in the North of Ireland, whether for charity, I think he said, or for public works,—at all events, I believe he said that was the last thing in the world that these public spirited plaintiffs meant to interfere with. My Lords, I do not believe that that was embodied in any instruction he received;—it was an ornament to the speech, of more or less effect, which Judges like your lordships occasionally hear;—it was a mere ornament to the speech, and very well put in for the purpose. But when I come to the bill, which is the check upon my learned friend's speech,—which speech can only be listened to in so far as it furthers the objects of the bill,—among other charges of the bill, all of a similar character, I find this, which as being pithy and conclusive, as well as not very long, I will read. It is at fol. 315; more than 315 folios being covered by statements and charges, before we get to the interrogatories. They charge “that the said Irish Society of London, although they have of late years assumed so to do, are not entitled to exercise any discretion with respect to the application of, or to apply, the rents and profits of the said ferries, fisheries, and town lands, or of any part of such rents and profits in or towards any local, public, or charitable purposes within or connected with the said county of Londonderry, or elsewhere.” Now that is pretty conclu-

sive. One does not desire any thing more clear and conclusive than that; and, as my learned friend Mr. Jacob says, that is really the point in the cause.

Now asto the prayer of the bill,—I do not know whether it was brought under your lordships' consideration at all, though we sometimes consider it material upon motions for a Receiver; but it is not the only unprecedented act of omission that we have had in this case. The prayer of the bill is this:—"That it may be declared that the plaintiffs and the other Companies who contributed to the expenses of the said new plantation in Ulster aforesaid, and to whom and for whose benefit the said lands and hereditaments were allotted and conveyed as aforesaid, are beneficially entitled to the rents and profits of the said ferries, fisheries, and town lands, subject only to the payment of the said yearly sums to the Bishop of Derry and the Governor of Culmore, and to the charges, if any, to which the same are subject, under the said articles of agreement under the charters respectively; and that it may be declared that the said Irish Society of London are trustees of the same rents and profits, subject as aforesaid, for plaintiffs and the said other Companies; and that an account may be taken by and under the direction of the Court, of the rents and profits of said ferries, fisheries, and town lands, which have been received by the said defendants, the Irish Society of London, or by any person or persons on their behalf, or for their use, or which, without their wilful neglect or default, might have been so received: and that a partition of the said ferries, fisheries, and town lands, between the plaintiffs and the said other Companies, may be decreed, and that the same may be effected by proper conveyances. Or if this honourable Court shall be of opinion that such partition ought not to be made,"—a very great stretch for a pure tenant in common to take;—"or if the Court shall be of opinion that such partition ought not to be made, then the said Irish Society of London may be removed from being trustees of the said ferries, fisheries, and town lands; and that one or more of the said Companies, or such person or persons as to this honourable Court may appear best, may be appointed trustee or trustees of the said ferries,

fisheries, and town lands, or that such other arrangement as to this honourable Court may appear just and proper may be made, securing to plaintiffs and said other Companies the due payment of their respective proportions of the rents and profits of the said ferries, fisheries, and town lands; and that in the mean time a Receiver or Receivers of the said rents and profits may be appointed under the decree of this Court; and that defendants, the Irish Society of London, may be restrained, by the injunction of this Court, from collecting, getting in, and receiving the same."

Now it used to be considered a principle in this Court, that unless the Court, upon a bill filed, could see by its prayer, and in the progress of the cause, a certainty of having to administer some relief upon that prayer, to which relief the appointment of a Receiver was a proper accompaniment, and unless it saw that case very clearly, no Receiver could be appointed. Now, my Lords, it is not necessary that I should,—but if I can show your lordships that no part of the prayer of this bill is that which can be granted—if the object of the bill goes beside the utmost rights to which the Skinners' Company, or any of the Companies, can contend,—if I show you that that only ground upon which, with reference to the position in which the Irish Society stands, any one of the Companies can come here does not exist, I think that I shall have more than enough upon the merits—more than is necessary, as I think, upon any consideration of the merits—to the disposal of the present motion.

My Lords, in an observation which I took the liberty of making to your lordships just now, I used the term "novelty" with reference to this application, and the nature of the duties to the performance of which the property in question was subjected. My Lords, I believe that the case is in species and in principle perfectly new in this Court. I never remember a similar trust, or alleged trust, brought under the observation of this Court for discussion; and I have never known claims of a description similar to those which the plaintiffs have brought forward upon the present occasion, alleged with reference to any state of things that had any analogy to the present.

My Lords, the case of the Irish Society upon the substance

of the matter is this,—that they are a public body, formed for public purposes, with reference to the public interests, and having duties of a public and permanent nature imposed upon them. That for the exercise of those duties, as well as others, that Society should have a discretion reposed in them which cannot be interfered with until it has been shown to be fraudulently exercised. There may, without the existence of fraud in its grosser and more ordinary sense—there may be malversation so great as, technically, to amount to conclusive evidence of technical fraud, as upon which the Court is accustomed to deal with by the name of wilful default;—but to make out a case of that description independently, if positively proved moral fraud, there must be malversation, clear, gross, and to a considerable extent. Mere error—honest error—will not do, unless of overwhelming character in point of importance, and unless it be so inherent in the person or system placed under the consideration of the Court, as to be insusceptible of correction.

My Lords, that being the position in which, as I understand this case, the Irish Society are placed, the questions upon the merits will be, whether I have correctly described their position and their duties. If I have,—then, whether a case of malversation has been established against them so manifestly—as for the purpose of an interlocutory application it must be either so fraudulently in point of morals, or so grossly in point of extent and character—as to call upon the Court to interfere to dismiss them. Remembering always, with reference to the latter observation, that the trustees, as they call them, (it is not my definition,)—that the trustees, as they call them, in the present case, are not individuals, but a Corporation. And I entreat your lordships' attention to this remark, as at once displacing nine-tenths of all that you have heard : a Corporation consisting of individuals, a great and vast majority of whom are annually elected and changed ; and therefore, supposing the Corporation to have been as clearly as they were constituted by royal charter the trustees of those estates, and for public purposes,—using the word “trustees” not in the technical sense in which my learned friend has used it, but in the more enlarged and less technical sense,—are you to displace them

because, at some period or other, individuals may have existed who may have made a mistake, and who have passed away, and ceased to exist amongst the trustees? Is one trustee to be displaced for the error of his predecessor? Is a Corporation to cease to be a trustee, because an existing member, who will be displaced or displaceable, by the authority provided by law at the end of the year, has made a mistake? Is the Corporation, therefore, to cease to be trustees? Why, my Lords, it requires but to state such a position to convince any man of the utter absurdity and the wildness of such an application. The Court has no authority to say—against the royal charter,—against the rights of the parties,—and against a course of two hundred years,—that this Corporation are not to be the trustees: no ground or reason can be, or has been, alleged for it. Then the argument is this:—that because the imputed errors, as I shall presently show, trifling, light, almost absurd in character, too absurd for allegation, if they existed at all, have existed almost, I may say, centuries ago: it is sufficient for my argument to say, that they existed last year or the year before;—therefore, the present individuals are persons not fit to be entrusted with the application of the money. As I said before, it requires but to state the proposition. When I come to show the constitution of the Corporation to your lordships, your lordships will see that it is perfectly possible, that at the moment at which I am speaking, the great majority of the persons composing the Irish Society may not have been members, nor one of them a member, of that Society at the time this suit was instituted. It is sufficient for me to state the possibility, when I am dealing with this case before lawyers, that, at the time when the bill was filed, not a single corporator now existing belonged to the body, with the exception of one or two official persons who are continued. I am desirous to state this, as every thing else, in a manner the fairness of which cannot be impeached,—that, at the time when the bill was filed, not one of the great majority, out of more than nine-tenths of the Corporation, had been members of the Corporation at any period of even the latest of the imputed malversations.

Now I am sure that it was unnecessary to bring this to your attention. I am sure it would have been, if this case had been fully opened; or if your lordships had been suffered to know the real bearings of the case, it would have been then unnecessary. Now, does it require a word more than that, to displace every observation upon the imputed malversation of individuals? It does not. I shall, however, go through so far as I think is material to occupy your lordships' time with subjects of such an amount and description. I shall go through some of them; and thus I make now merely this observation, for the purpose of bringing under your lordships' attention the utter immateriality of every act of that sort, depending upon the conduct or capacity of individuals to the consideration of a question of trust, in which, from its very nature, every person constituting the body, at least more than nine-tenths, must be annually subjected to displacement, and to the operation of annual election by a great and popular body—I mean the Common Council of the City of London, to whom that power has been given and confided by the charter. That that body is a popular body at present, few will dispute. That great and eminently popular body, the Common Council of the City of London, has the right, and the duty which it has exercised, and does exercise, imposed upon it by the charter, of changing the majority of this corporation, namely, nine-tenths of its members, at least every year, and of displacing every member of it at any other time for misconduct. And is that the case in which, after a course of practice of more than two centuries' duration, an institution of royal foundation of this description is to be put an end to;—because the Skinners' Company say, that in the year 1832, there had been a piece of plate given wrong here, and a cream jug improperly disposed of there, or a picture of a respectable individual painted to hang up in the Irish Chamber, which ought not to have been so painted and hung up? Because the Skinners' Company are dissatisfied with those bagatelles, those matters which must occur, and which often do occur in every public body who are desirous to promote the zeal and good services of future servants, by commemorating the worth of those who have



faithfully served the institution, which does exist, and I hope always will exist, in every body which has duties of this description to perform;—because the Skinners' Company, in the year 1832, are dissatisfied with a picture hung up in the year 1687, or with a piece of plate which Chief Justice Singleton refused at nearly the same period, your lordships are to destroy the Corporation, and to innovate upon this practice! Really, my Lords, but that so much time has been occupied by it, and that all this has been argued with an appearance of gravity, I should think it too trifling to bring under your lordships' notice, because every single thing in the case beyond the devotion of public money to public works and public charters, (which my learned friend Sir W. Follett has professed not to quarrel with upon principle,) is reduced within the compass of a few pieces of plate, and a few pictures of some eminent individuals during a long series of years; and a third ground of objection,—to the giving of some remuneration of the most trifling amount, when you come to dissect it, which is hardly more than sufficient for the coach-hire of a member of the Irish Society, to come from Knightsbridge to Guildhall. But because the members of the Society have a fixed remuneration of the smallest amount for their attendance, which, by the bye, has existed in practice ever since the year 1683; and it is done somewhat upon the same principle on which the great insurance offices proceed, for the purpose of giving the spur which human nature requires for insuring the active and regular attendance of men. It is an universal practice in this City and in this Corporation, which has existed ever since the year 1683, and is of miserably trifling amount. That is the third objection; and I believe the fourth is, the dinners which this Society has occasionally given.—To be sure, a complaint about dinners, coming from one of the City Companies, does look a little strange. I for one am a great supporter of those dinner institutions; I think there are other things in the world worth living for besides political intrigue and political excitement and agitation. And I hope the time will come when those who now dispute the propriety of these dinners—I cannot say that I hope it, because they will of course only see

the propriety of these dinners when they come in a situation to participate in them themselves—but I hope that other portions of the public who are in a disposition to sympathize with them, will see that there is a good deal to be said upon that subject. But, however, it is a practice which has existed for a very long series of years; and, in point of fact, the highest charge,—for this is a charge for a dinner that took place more than a century ago, in 1703,—is between 200*l.* and 300*l.* for a dinner to the Duke of Ormond,—of course a large sum in those days. Since that, the dinners have been occasional and moderate in point of amount of charge. They have been only what is universal throughout public bodies of that description, and this course has been going on for centuries without complaint. But the remarkable part of the case is, that the nearer we get to the present time, the less is the expense laid out upon those entertainments; because upon the accounts of the last year, if I recollect right, the expense is much more moderate than in any preceding year within the last printed account, and for that I will presently give your lordships the reason.

Mr. WIGRAM.—Is that in your Answer?

Mr. KNIGHT.—No; I am rejecting what is not in the Answer.

Mr. WIGRAM.—Is this in the Answer?

Mr. KNIGHT.—Yes; the printed account.

Mr. WIGRAM.—Your last Answer was put in in October 1832.

Mr. KNIGHT.—The modern printed accounts which have been circulated are not in the Answer, and therefore I will not refer to them; but to say that this great public Institution is to be interfered with upon grounds like these is to say something quite ridiculous.

My Lords, I have stated what I consider upon evidence, not upon speculation, to be the reason of these measures; and I will now give your lordships the cause of this suit. Many documents have been brought forward;—cases and opinions, and so on, as if cases and opinions could change the law, or as if mistaken representations of a fact would make the fact other-

wise than it is,—for the purpose of showing that the Irish Society acknowledge themselves to be trustees for the Company, of the benefits to which those Companies were entitled. Your lordships will find from the Answer, when you come to hear the passages which I shall bring under your attention, that for a very long series of years, very especially during every period to which any degree of malversation has been attributed, the Irish Society was in effect in the hands of the twelve great Companies; because it had been the practice of many, many years, uniformly adhered to, for the Common Council of London, in whom vested the annual selection and annual appointment of the members of the Irish Society, uniformly to elect the members from members of the twelve great Companies, including, of course, the Skinners' Company.

My Lords, this was thought to savour of monopoly, which the fashion of the times does not favour; and accordingly, in the year 1831, the Common Council, being a very popularly constituted body, resolved to change the course of proceeding (all this is in the Answer), and to elect the members of the Irish Society,—that is, the Court of Assistants,—from the Companies at large, not from the twelve Companies exclusively. From that time to this,—a time be it recollected previous to the institution of the suit,—the management of the affairs of the Company has been so conducted. I should mention, that half were elected in February 1831, and half in 1832; and, of course, they will be changed again in the February that is now coming. The effect of that was, to take the monopoly of this Corporation from the twelve Companies. I must say, however, and it is for the credit of the twelve Companies, that considering the position of temptation in which they were placed,—the twelve Companies being the persons who, according to the course of practice which the Irish Society had never disputed, were to receive in dividends for their own benefit, the surplus income,—it was a portion of great temptation, when the former members of these Companies, who were the rightful consumers of the dinners of these Companies,—I do not speak of the Society, but of the dinners of the Companies, which cannot be had without money, and who were rightly interested in

increasing the revenues and wealth of those Companies ;—when, I say, men thus situated were the persons composing the Irish Society, who were in the first instance to exercise public duties, and were to hand over the surplus to the twelve Companies,—I say, it was a situation of very great temptation ; and I think it does great credit to these twelve Companies and their members, that in this state of things the administration was as good as it was, and was subject to so very few blots and objections. But it probably was equally right in the Common Council of London, having their attention called to this, to remove them from such a situation of temptation,—to remove a ground of obloquy,—a ground of public suspicion and observation ; and, therefore, the Common Council did wisely in throwing open the election, and in abandoning the old practice of confining the Court of Assistants to the twelve Companies, and in appointing them from the Companies at large. But the members of the twelve Companies did not at all like this. It was depriving them of a monopoly—depriving their leading members of an advantageous monopoly, which term I use not in any other than a respectful and courteous sense,—therefore we may conceive that they were dissatisfied. Accordingly, after the first election in February 1831, comes Mr. Kensit's first letter of the 29th of March,—Mr. Kensit being clerk and solicitor of the Skinners' Company,—the very month after the first adoption of the new measure of throwing open the Corporation, and destroying that monopoly which the twelve Companies had.

The letter of Mr. Kensit is dated the 29th of March 1831 (I am reading it from the Answer, from folio 375 or 376 of the Answer):—"Gentlemen, a meeting having been held between several of the twelve chief Companies of the City of London regarding their common interests in the property under the management of your Society, and it having been deemed right that each Company should be furnished with an account of the receipts and expenditure thereof, I am accordingly desired by the Skinners' Company to apply to your Society, and to demand a clear and explanatory account of the receipts and disbursements of your Society for five years, terminating at the 25th

March 1830, or to the latest period at which such accounts can be accurately made up, together with an account of such arrears of rent as remain unpaid, and also any charges which may be outstanding against the said Society. I have the honour to be, &c. T. G. Kensit, Skinners' Hall, 29th March 1831." What was done upon that will belong properly to another part of this case.

Now this is a letter written from the clerk of a Company, which, from all time in the existence of this Corporation, had had one at least of its own members in this Corporation, and set in motion by a meeting of some of the twelve Companies, supported by Mr. Kensit, which of course also had members of their own upon this Society. Now, when you look at the dates, the date of this letter of March 1831, is just after the break up of the monopoly in the month preceding: thus showing that it was obviously written for the purpose of a suit and litigation, if they could find any ground for reseating themselves in their old places, which is what they ask in their bill. When you find that in the following February the same system opposed to monopoly was acted upon, and you find that the present bill is filed by the Skinners' Company, who, though Mr. Kensit's letter purports to have been written upon the unanimous opinion of the twelve Companies, are the only persons who have had the prudence to let their paw be put into the fire;—when you find that, after all this, the Skinners' Company are the only persons who have had sufficient wisdom and courage to bear the brunt of an application of this description; and you find many of the other Companies either neutral upon the present occasion or entirely opposing it,—I think your lordships may form some judgment of the character and circumstances of that letter, and of the present suit. The absurd part of the plaintiffs' case is, that every single act of malversation was the act of the parties themselves, because this case is put forward sedulously by the plaintiffs, as being equally the case of all the twelve Companies,—that though there was but one plaintiff here, yet the great body of the twelve Companies supported it. Yet we find, in this state of things, that if there were any malversation anterior to the year 1831 (which I do not admit), that

every single act of default, every single act of mismanagement, was in substance the act of those parties themselves, against the effect of which they now shield themselves by attributing them to an ever-enduring Corporation. I say that, as to every statement of mismanagement up to that time, it becomes absolutely ridiculous; and there is now nothing except this—that since the filing of the bill they say that the dividends have been withheld. Whom have the Skinners' Company to thank for that? Up to the time of filing the bill, I will undertake to say that, as against any Corporation, any member of this Corporation, who existed when the bill was filed, or who had existed in the February preceding,—for the Corporation had received no change between February 1832 and July 1832,—that as against not one single member of the Corporation existing when the bill was filed, or since existing, has any single charge been attempted to be brought forward:—it is as against themselves, and themselves alone, against the twelve Companies and their predecessors, that every observation that has been made bears. But, I repeat, that it is to the praise of the great Companies in London, which none can respect more than I do, that, placed in the situation in which they were, there exists so little matter of complaint.

Now I have endeavoured to describe the nature of the application, and the nature of the suit. I have stated to your lordships that the Irish Society have great public duties to perform, which require an expenditure of revenue, and an exercise of discretion paramount to any private right or private interest—private right and private interest being all upon which this bill proceeds. My learned friend, Sir W. Follett, met that view of the case thus:—"True," he said, "originally this body was formed for great public purposes."—I cannot, and I do not deny it;—"but," says he, "all that has ceased. Ireland is planted. They have fulfilled the objects of their creation, and all this has been entirely put an end to; so that the public object being expired, the private interests, which were postponed to the public objects, are let into possession upon the failure of the previous particular estate."

Now that was the substance of a great part of my learned

friend Sir W. Follett's argument. I meant to ask him,—and I now, therefore, do so,—if these public purposes, which on all hands it is agreed once existed,—if they have ceased, when was it that they did cease? My Lords, I think I have a right to put that question. If it be admitted that there were once public purposes and public objects paramount to any private interests and considerations which were to be provided for as long as they existed,—if they are alleged to have ceased to exist, I have a right to have the question answered—When did they cease to exist? The Corporation was originally founded in the year 1613. Great part of Ulster was in a sense planted in the reign of James the First; there followed the reign of Charles the First; there followed the Commonwealth. Charles the Second was restored to the throne. Why, one of the documents upon which my learned friends have proceeded, and which forms an important part of the case, is the charter upon which the Society at present act, of King Charles the Second, granted throughout in the same words, and in the same language, and with the same clauses and provisions as the charter of James the First. Was Ulster not planted then? If the object was the mere plantation, the mere transportation of Protestant persons to the north of Ireland, surely one might consider that to have been done during the course of the years that intervened between the year 1613 and the charter of King Charles the Second, which was in 1662. We may call that half a century. But that it had not ceased then is quite clear; because the charter of King James is renewed. The charter of King James having been arbitrarily and illegally ceased, and put an end to, during a time of unconstitutional irregularity and violence, it is restored in the year 1662 by King Charles the Second. Well, then, let us have some evidence of its having ceased to exist.

I know not whether your lordships, as Lords Commissioners of the Great Seal in this country, are judicially to know the state of Ireland at present;—but let us go through the events which succeeded the reign of King Charles the Second. We have a short abstract of some of the events and proceedings of the Irish Society,—a book that has been used and made part

of the mutual case which was printed in the year 1822, nine years before the monopoly had ceased ; and was therefore printed under the auspices of the twelve Companies. Well, therefore, may we use that book, because it in every sense belongs to them. Looking through the short abstract, or, as the book calls it, concise view of some of the more material proceedings and acts of the Irish Society, you find them acting as a public body, and for public purposes, in the reign succeeding that of Charles the Second, particularly in the reign of William and Mary. You find them attending the Lord Lieutenant of Ireland. You find them answered, formally and officially, by the Lord Lieutenant himself, in a letter addressed by him to them upon subjects of this importance. You find them acting in the same way in the reign of Queen Anne, and in the reign of each of the Georges ; and all this continued course of proceeding your lordships are called upon to put an end to at once, because the Skinners' Company say that these public purposes have ceased to exist ; that is, that the professed object of the institution of the Irish Society being the improvement and establishment of humanity, civilisation, and order ; and as a great means to that end, the support and extension of the Protestant religion in Ireland ;—these having been the great and avowed objects of this institution, all that is so fully and so completely effected ;—Ireland, from Donegal to Connemara, —from Carrickfergus to Bantry Bay, is in so complete and perfect a state of civilisation, humanity, and order ; and the Protestant religion t<sup>h</sup>roughout Ireland in such a state of triumphant prosperity, that no institution having for its object the civilisation of Ireland, the humanity of Ireland, the good order of Ireland, or the establishment of the Protestant religion in Ireland, can be treated otherwise than as an establishment *functus officii*, having nothing more to do.

Well, but if all this happened, when did it happen ? Nobody has said that. I have proved that it cannot have happened in the reign of Charles the Second ; and, as far as acquiescence in practice, sanctioned by the conduct of the parties and by the government of this country go, these objects have never ceased to exist since. What may be the present state of Ireland, ac-



according to my learned friend Sir William Follett's argument, whether it deserves that representation of its internal condition, your lordships cannot judicially know; and I, as counsel, do not know. There has been no evidence of it, and there I leave it. I take it, therefore, that your lordships will hardly be of opinion, that those public objects, and public purposes, have ceased to exist. I shall bring before your lordships' attention some evidence presently upon this part of the case.

The next question will be, if I am right in that view of the case, that there were public purposes which your lordships cannot treat as having been fully and clearly performed; they are public purposes which require the exercise of discretion—that of course is inevitable. Then I shall have to address myself to the question of that discretion:—How? By whom? In what form? Upon what grounds? By what jurisdiction? And, to what extent that discretion may be interfered with, or controlled? I shall have to bring that under your lordships' consideration. I shall satisfy your lordships of the extreme delicacy and difficulty in point of jurisdiction, and otherwise, of that question. I shall then address myself to the consideration of the question, how far it can be justly imputed to this parliamentary, this royally chartered trustee (if I may use that expression of this body) how far any fraudulent or gross malversation can be attributed to it at all; and, if it can be attributed to it, then, whether, from the very nature of the body, it is a mismanagement or an error which is likely to be continued, or for the prevention of which it would be useful to annihilate the body itself. And having addressed your lordships upon these points, and brought forward such evidence bearing upon them as I shall think it necessary to trouble your lordships with, I shall gladly then leave the case in your lordships' hands. But I must of necessity occupy some time in proceeding upon those parts of the case which have been in my judgment left defective,—not, as we all know, from want of ability on the part of my learned friends, but rather as a proof of the ability with which they have conducted their case, in consequence of which they have not been brought under your lordships' attention. I shall begin with a small portion of the

documents that preceded the charter, and then beg your lordships to go with me through some parts of the charter of King James, in which I believe I shall show, that my learned friends have passed over the very portion of that charter which relates to, or which shows that character of permanency and continuance which numerous clauses throughout the charter show that it meant to attribute and give to the Irish Society.

*[Adjourned.]*

*Friday, 8th January, 1836.*

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Mr. KNIGHT.—My Lords, when your lordships rose yesterday, I thought that I had quite brought to a close the preliminary observations as to some of the characteristics of this suit, and of the present application, with which I deemed it expedient to trouble your lordships; and I find, that though I had not quite done so, I had nearly so. In looking over a note, which I believe to be substantially, if not literally accurate, of my learned friend Sir W. Follett's address to your lordships, I find, that among other things, he expressed himself to this effect. He says:—"The Irish Society, who held this property in their hands, continued till a very late period to hold this property, according to their acts and declarations, as trustees for the Companies in London, and the profits were divided amongst the Companies year by year; but of late years," said my learned friend, "this property has not been managed consistently with their duties as trustees. They then set up claims which are inconsistent with their character,"—all of late years, your lordships see;—"they have claimed to have the control over, and management and disposal of this property, which is wholly inconsistent with the character in which they hold it; and they have, moreover, been guilty of expenditure, wasteful and extravagant in a degree which cannot be justified in any character in which they may assume to hold it. These claims, which have been set up by the Irish Society, (and there cannot be any dispute as to the fact,) have rendered it imperative upon the City Companies to take these

proceedings against them, in consequence of the extraordinary claims which have, within the last year or two, been set up by this Society; because, before we filed this bill, the Irish Society not only stated that they were not Trustees of the indivisible property which was in their hands, but they actually claimed to have a control and a paramount interest over the City Companies in the estates which have been held by the City Companies distinct," and so on. And my learned friend went on to say,—“that not only the property which is held by the Irish Society is their property,” (that is, the property of the Companies,) “subject to no control of any sort or kind, but that the Irish Society are simply trustees for the benefit of the Companies.” That is a question we shall set before your lordships: he says,—“I undertake to satisfy the Court of that by incontrovertible evidence.”

Now, of course, when your lordships heard that, you must have taken it for granted that it was intended to be proved, and that it could be proved, on the part of the applicants, that some new course of acting, some new and extraordinary claim, some new denial of former admissions, had been set up or made by the Irish Society, which, in the language of my learned friend, had rendered it imperative upon the Companies to proceed in this way, and that they had of late denied themselves to be trustees. Your lordships have heard all the evidence that the applicants have thought fit to lay before you, and you know, therefore, as well as I do, that there has not been the slightest shadow of foundation for that statement. Your lordships now know, as well as I do, as far as the applicants' case has been stated, that the Irish Society, up to the institution of this suit, had only continued that same course of proceeding, and acting, and of claim, which, ever since their institution, in the early part of the seventeenth century, had existed. There has been no change; there has been no new claim; there has been no variation of conduct; there has been no assertion of right, control, or power, but that which has always existed and has always been asserted.

So much for my learned friend's statement, inaccurate, as far as the evidence goes, though no doubt agreeing

with the instructions ; containing, doubtless, a representation of the evidence upon which my learned friends proceeded. So much for the accuracy of that representation, that any thing now had been done, claimed, or said, by the Irish Society, which, in the language of my learned friend, had rendered it imperative upon the Company to proceed. The alleged novelty is, in fact, the uniform course of proceeding upon this subject.

It was further said, that of late years the Irish Society have withheld from the Companies the dividends of the surplus rents and profits which they have been accustomed to make. There is not the slightest shadow of foundation for that statement. Continually, up to the filing of the bill, the same dividends, as for two centuries had been accustomed to be made, were made and continued. And it is only by reason of this suit, and since the suit, that, in deference to the proceedings and to your lordships, any different course of proceeding has been adopted, which, therefore, has been the act of the plaintiffs themselves. My Lords, that is one specimen of the accuracy of the instructions under which my learned friends proceed. I am now in a condition to state that, distinctly and unqualifiedly, because you have heard the case and the whole evidence which they have brought forward.

But, my Lords, one more specimen of the mode in which this case has been got up and conducted :—that is, a specimen of the instructions your lordships heard from my learned friends, but very particularly yesterday, from my learned friend the third counsel for the application. In his summing-up, your lordships heard grievous complaints of the conduct of this Company, in granting leases renewable for ever. Your lordships must have thought that it was a serious ground of complaint, that this Company had been improperly dealing with their property, by granting leases in this way ; but it was not considered expedient to inform your lordships, that it appears in the Answer, as well as in the book which, (emanating from the twelve Companies in 1822, and coming from the possession of the Irish Society, they have made part of this case,) that in the year 1766, Sir James Eyre, the then Recorder of London, had

been consulted upon that very subject. Perhaps your lordships will have the goodness to take a note, page 123 of the book.

Mr. LLOYD.—Is that the edition of 1822 ?

Mr. KNIGHT.—It is the only edition I have. I prefer the edition of 1822, because it is the edition of the twelve Companies. Now at page 122 and 123, on the 16th of July 1766;—"It was ordered, that the Recorder's opinion should be taken, whether it would be legal for the Society to let the houses in Londonderry and Coleraine, with the acres and perches in perpetuity.—30*l.* were granted for the relief of the poor of Coleraine.—5th of August, the Recorder was of opinion,"—we mean opinion, my Lords, one of the greatest authorities of modern times,—"that the Society had the power to let the leases in perpetuity." Your lordships have heard a great deal of cases and opinions, but it was not thought expedient to call your lordships' attention to this passage in the second paragraph in that page:—"There is no express mention in the letters patent of any trust for the twelve Companies; and indeed, the Society have always acted independently of them; nor have they ever admitted themselves to be accountable; yet, from time to time, as money has been in hand, they have made dividends to the twelve Companies." If we are to trouble your lordships with assertions in cases, one would have thought it might have been as well to have mentioned an assertion in a case laid before such an authority as Sir James Eyre. Now Sir James Eyre's opinion was this:—"I am of opinion, that the Society have sufficient power to adopt the proposition of perpetual renewable leases, in case they should think it a benefit to the estate committed to their care to grant such leases."

Now, supposing it rested there, there would] be something whimsical in making it a complaint of a breach of trust in the year 1835 or 1836. But this Corporation was acting upon the opinion of such a man as Sir James Eyre so long ago as the year 1766. But your lordships will hardly credit me when I tell you, that in the answer, upon which my learned friends move, there is a positive statement of a regulation made by the Irish Society, immediately after the infusion of a different class

of corporators, by the change that took place in February 1831, and which was completed in February 1832; and immediately after a complete infusion of the new members, this resolution, stated in the answer upon which my learned friends move, and of which it was not thought expedient to inform your lordships, was come to.

Mr. LLOYD.—What folio?

Mr. KNIGHT.—In folio 392:—you have read a passage close by it. After speaking of Sir James Eyre's opinion, they say that several standing orders were resolved on by the Society, on or about the 25th of February 1832, nearly six months before the bill was filed; amongst which was one that no leases should be granted in perpetuity. One of the very first acts, therefore, after the reformation in the mode of electing the members of the Companies being to do this; and now this conduct in granting renewable leases is made a ground of complaint, by those in whose time, through whose acts, with whose knowledge and approbation it was done; against them, who alone had never done it, and who had resolved that it should not hereafter be done.

Now, if I had not read from the Answer, your lordships must, of course, have thought that I was labouring under some mistake; and that a case could not have been dealt with before the Court in such a way as opening a complaint, which is completely met by statements in the very Answer upon which they move, but which they omit to read, though they are in the immediate neighbourhood of statements upon which they rely. Now, I have thought it right to add these statements to the few preliminary observations which I made, for the purpose of characterizing the present suit and application:—certainly I have a very strong opinion about it; the accuracy or inaccuracy of which will be tested by what your lordships shall ultimately do with this case. It is a case, upon which I have as strong an opinion as upon any that have ever come under my notice,—stronger than I think it expedient or necessary to express.

Now, my Lords, I have considered since your lordships rose, as well as before, with some anxiety, the best mode of bringing

forward the case before your lordships, as it really is, so as to avoid unnecessary repetition and prolixity ; but it has seemed to me that, upon the whole, the best course would be for me to go through that which ought to have been done before—the Answer upon which they move ; and in doing so, I certainly shall endeavour to avoid, as much as possible, troubling your lordships with instruments that have been already opened, or with unnecessary statements ; but, after all, your lordships must be put in possession of the Answer, and I may as well do it.

Now, the Answer begins—and I am really sorry to take your lordships back, for the fourth time, to the reign of James the First, in order that we may again sail down the stream of time. They begin stating the historical title to the lands ; and then they state the articles and conditions, which your lordships know are copied in the outset of the printed book ; and for me, therefore, it is more convenient to resort to the printed book ; and I am only anxious to draw your lordships' attention to one or two particular passages, which have escaped observation hitherto.

If your lordships will be good enough to look at page 4 of the book, you will see that the fifth condition proposed to the undertakers is this :—" The said undertakers, their heirs and assigns, shall have ready in their houses, at all times, a convenient store of arms, wherewith they may furnish a competent number of able men for their defence, which may be viewed and mustered every half year, according to the manner of England." I am only calling your lordships' attention to such parts as have been *accidentally* omitted before. I will ask your lordships to mark No. 11. " The said undertakers shall have power to erect manors, to hold courts baron twice every year ; to create tenures, to hold to themselves upon alienation of any part of their said portions, so as the same do not exceed the moiety thereof." Your lordships will see no trace of that limit in point of time, as to either of those classes, that my learned friends, or one of them, have spoken of.

Then I would beg your lordships to mark Nos. 4 and 5 in page 7, as of the same character ; and Nos. 4 and 5 in page 9.



“ That in every of the said counties, there shall be a convenient number of market towns and corporations, erected for the habitation and settling of tradesmen and artificers, and that there shall be one free school at least appointed in every county, for the education of youth in learning and religion ; that there shall be a convenient number of parishes and parish churches, with sufficient incumbents in every county, and that the parishioners shall pay all their tithes in kind, to the incumbents of the said parish churches.”

Then comes in the book the commission of the 1st of July 1609 ; upon which I would only call your lordships' attention to No. 7, in page 13. The Answer, after setting out a part of these considerations, goes on, at folio 9, rather argumentatively than otherwise, to suggest this,—“ That by the whole tenor of said articles it appears, that it was not intended upon the part of his said Majesty, or his said Privy Council, that any part of said escheated lands should be made solely with a view to the profit of the individual undertaking the said plantation, but that such undertakers should, on their part, engage to adopt in manner in said articles directed, the means there pointed out for securing the peace of that part of Ireland where said lands and hereditaments were situate, and the establishment of the Protestant religion there ; and that said articles accordingly contained stipulations,” of which your lordships are already sufficiently aware.

My Lords, the Answer admits, in folio 14, that, in pursuance of the aforesaid project for planting and establishing said settlement or colony, his said late Majesty King James the First, through the then Earl of Salisbury, communicated with Humphrey Weld, the then Lord Mayor of the City of London, in or about July 1609, and propositions were made in behalf of his Majesty to the Mayor, Commonalty, and Citizens of London, commonly called, The Corporation of the City of London, to undertake the planting and establishing of said settlement or colony.

Now your lordships will observe, at the very outset of the connexion of the City of London with this undertaking, the Corporation of London are the body applied to by the Crown ;

and your lordships will find throughout that the Corporation of London, or their Committee (as they were at first) the Irish Society, are throughout the only persons, indeed perhaps I ought to omit the Irish Society from the observation, and confine it to the Corporation; they are the persons with whom the government communicated upon the subject, and to whom the government looked.

Now the motives and reasons which are put forth by the Privy Council to induce the City of London to undertake the plantation, are printed at page 17, and I think they were in some measure brought under your lordships' attention by my learned friend. But I am here likewise under the necessity of desiring to point your lordships' attention to one or two passages to which your attention was not pointed before. I beg your lordships to mark the two passages beginning "And likewise," at page 18: "And likewise to grant them licenses to transport all prohibited wares growing upon their own lands. And likewise the admiralty in the coasts of Tyrconnell and Coleraine, now, as is supposed, in the Lord Deputy by the Lord Admiral's grant, may be, by his Majesty's means, transferred unto them for the term of twenty-one years."

Then, if your lordships will look at the second paragraph in page 21, under the head of *Profits which London shall receive by this Plantation*,—"These colonies may be a means to utter infinite commodities from London, to furnish the whole north of Ireland, which may be transported by means of the rivers of Bann and Lough Foyle, into the counties of Coleraine, Donegal, Tyrone, Armagh, and Antrim."

My Lords, the Answer, after referring to the proportions, states, at folio 18, "They don't believe that said Corporation of the City of London, at the time of said proposal being made, was either unable or unwilling to accept the same; for they believe that said Corporation did accept the same or the like proposals as hereinafter mentioned, and that said Corporation determined or considered it proper that the monies required for said undertaking should be levied upon the Companies as hereinafter mentioned. Say that among the records of the said City of London, there is the following record of a resolu-

tion and order of a Court of Aldermen of the said City, held on the 1st day of July 1609,"—I rather think that was read,—  
 "A resolution and order of a Court of Aldermen of the said City, held on the 1st day of July 1609; Weld, Mayor." At this Court, in the presence of divers selected Commoners of this City, warned for that purpose, was openly read a certain precept in writing, recommended unto this City by the right honourable Secretary of the King's Majesty's most honourable Privy Council by express direction of the King's most excellent Majesty, concerning a plantation in the north parts of Ireland, with motives and reasons to induce and persuade this city of London to undertake plantation there. And with intimation of the King's Majesty's most gracious favour and love to the cizitens of London, to grant unto them the first offer of so worthy an action, which is likely to prove pleasing to Almighty God, honourable to the City, and profitable to the undertakers. Whereupon it is ordered, that precepts shall be presently sent to all the several Companies of this City, requiring them presently to assemble together a competent number of the gravest and most substantial men of their several Companies, and to consider advisedly of the said precept. And every Company to nominate four men apiece for their several Companies, of best experience, to consider and set down such reasons, orders, demands, and other circumstances, in writing, as is fit to be remembered, required, or performed, in the undertaking of so worthy and honourable an action; and the names of those persons nominated for every several Company to be certified by writing to the Lord Mayor before the 5th day of this instant July."

So that your lordships see by this, that the first introduction of the mention of the Companies is only by way of domestic regulation in the City, and a convenient mode of taking the sense of the citizens; because the Companies at that time of day being very different from what they are now, (in which were comprised the actual trading citizens ranged under the heads of their several businesses);—being then still those guilds and fraternities of the several trades which they were intended to be,—those several citizens being thus ranged and classed

under their several Companies, it was the most obvious and convenient mode of taking the sense of the citizens, to have a selection of the citizens from each of their several classes or Companies; and thence, and thence alone, your lordships will find the introduction of the Companies into a connexion with this undertaking; they were classifications and sections of the community at large of citizens, which afforded a most convenient and obvious mode of communicating with the citizens, and taking their sense upon whatever was to affect the general body of the City at large.

They go on to say, "They believe that in pursuance of the order, said Corporation of the City of London caused precepts in the name of the Mayor to be served upon all, or the greater part of the corporate Companies of said City, requiring them to assemble together in respect of said offer made to said City of London as aforesaid; and to nominate four persons of each Company to consider the same in conjunction with said Corporation of the City of London. Say that it appears by the records of said Corporation of the City of London, and defendants believe it to be true, that several precepts, relating to the matters aforesaid, were accordingly at divers times sent to the said several Companies of the City, two of which respectively, as extracted from said records, are in the respective words and figures, or to the purport and effect. These were read, I think.

Mr. LLOYD.—Yes; they were read.

Mr. KNIGHT.—"To the Master and Wardens of the Company of . By the Mayor. Whereas, I lately directed my precept unto you concerning the honourable plantation in Ireland, together with the copy of motives, and a printed book with intimation of his Majesty's most gracious favour," and so on; and then the precept requires them to attend upon the reasons and demands. I think if you turn to the evidence read by Sir William Follett, you will find that is among them. Then there is the second, which, if read, was not particularly observed upon. The second is this, at folio 28 of the Answer: "To the Master and Wardens of the Company of . By the Mayor. Whereas, two several precepts have been

heretofore directed unto you and other Companies concerning a plantation in Ireland, with the intent and purpose that the Committees by you named should have conferred with his Majesty in council of the realm of Ireland concerning the same; but by reason of some mistaking the Committees of the several Companies made answer in writing before any conference had with his Majesty's said council of Ireland, which was ill accepted by the lords of his Majesty's most honourable Privy Council, as hath been publicly delivered at a full assembly; whereupon I, and my brethren the Aldermen, in the presence of divers the chief commoners, entreated Mr. Recorder to inform the lords that the answer formerly made proceeded out of mistaking, and not of undutiful intent or purpose; and therefore there was nominated for conference with the council of Ireland, touching the matter projected, Sir Thomas Bennett, Sir Thomas Lowe, Sir Leonard Halliday, Sir Henry Rowe, Sir James Pemberton, knights, and Mr. Cockaine, Aldermen, and Mr. Richard Gore, Mr. Bond, Mr. Leate, Mr. Wheeler, Mr. Megges, Mr. Greene, Mr. Soda, Mr. Robert Middleton, Mr. Fox, Mr. Speering, Mr. Barton, and Mr. Craford, commoners, to treat and confer concerning the said plantation, and to make report to me and my brethren the Aldermen, what should pass in that conference, that so much furtherance might be given to the action in hand as the honour of such an offer deserveth. Now, forasmuch as the said Committees, after a full and large conference with the council of Ireland, have received such satisfaction, as well as the honour of the action, the good that may come to the kingdom and City by the same, as the profit that is likely to redound to the particular adventurers, as hath given good encouragement to the Committees and others to become adventurers therein; and liberty also is given, for their further satisfaction, that all things shall be answerable to that which is reported, that certain men be chosen and sent by us to view the place, and to make return unto us; so that if it be found to be not answerable to what is reported, and profitable for the undertakers, we may be at liberty to leave this undertaking, any thing now done notwithstanding. These are, therefore, in his Majesty's name, to will

and require you, upon Wednesday coming next, to assemble in your Common Hall, all the Aldermen of your Company, and the four Committees, by you formerly named, and all other the assistants, livery, and men of note of your yeomanry, by special summons, then and there to understand and be informed by your Aldermen and Committees, the whole proceeding that hath been taken concerning the said honourable intention of plantation, and to make a book of all their names, and to understand every man's answer, what he will willingly contribute for the furtherance of so famous a project, to the intent his Majesty may be informed of the readiness of this City in a matter of such great consequence, and to the end, if any of your Company shall be then absent, being lawfully summoned, he may be fined for his contempt; and that all such as shall be then absent may be afterwards dealt withal concerning the same, and a note also to be taken of those that shall refuse, wherein you are not to fail, as you tender his Majesty's service, for that the Committees are to return an answer to the Lords of his Majesty's Privy Council, and, if occasion be, to confer with the council of Ireland, on Friday next. From the Guildhall, this 24th of July 1609."

Your Lordships will have observed, that it appears from these documents, so far as I have gone, that, honourable and profitable as this undertaking was said to be, it did not receive originally quite so willing an acceptation as the Government had desired; and accordingly it was necessary to apply a spur; and your lordships accordingly find, by this last precept, that something very much akin to force was used upon the occasion. It is quite plain that the Government acting upon the City, the City was obliged to act upon itself, in order to come into the designs of the Government, which, it is obvious, had resolved upon effecting its purpose in substance, whatever might be carried into effect; and your lordships will find also that it is not the Companies that are to confer with the Council, or to exercise any discretion or judgment upon it, but that the persons to confer with the Council, and to transact the matter with the Government, are selected entirely by the Corporation of London, or their governing body.

The Answer goes on to say, at folio 35, "That an order of Common Council, the previous date whereof the defendants are unable to set forth, but believe that same was made soon after the date of said last-mentioned precept, and on or about the 1st of August 1609," which would be just a week after the last precept;—it was this:—"Whereas, the Lords of the Privy Council have heretofore signified his Majesty's gracious pleasure to divers Aldermen and Commoners of this City concerning an intended plantation in the realm of Ireland: and whereas divers Aldermen and Commoners, elected by this court, have heretofore had conference with his Majesty's Council of Ireland about the same."—Your lordships observe that expression, "elected by this court."—"It is this day, therefore, upon the motion and commandment of the right honourable the Lords of his Majesty's most honourable Privy Council, signified to divers Aldermen and Commoners of this City, upon Sunday last, at the council table, concluded and agreed that four wise, grave, and discreet citizens of this City shall be presently sent to view the place for the intended plantation in Ireland; and thereupon, after mature and deliberate consideration had by this court, it is ordered and decreed by the right honourable the Lord Mayor, the right worshipful the Aldermen, and the Commoners, in this Common Council assembled, and by authority of the same, that John Broad, goldsmith, Hugh Hammersley, haberdasher, Robert Tresswell, painter stainer, and John Rowley, draper, and citizens of this City, shall forthwith, at the City charges, undertake the said voyage into Ireland, to survey and view the place and grounds intended for the new plantation there, and they to make report to this City, at their return from thence, of their opinions and doings touching the same."

The Answer goes on to say, the defendants "believe that said Corporation of the City of London did not, save as aforesaid, in July 1609, or at any other time, make any other proposal," and so on. They believe "that it appears by the last of said precepts hereinbefore set forth, and by said order of Common Council, that such arrangement as therein respectively is mentioned, was made between the said lords of the Privy

Council, acting on behalf of his said Majesty King James, and said Corporation of the City of London, with respect to the sending of parties to view the lands proposed to be settled or planted as aforesaid, but save, as appears by said precept or order, defendants cannot set forth whether or not any agreement was made between said lords of the Privy Council, and said Corporation of the City of London, to the purport or effect in said bill mentioned. Deny that at all times or now, the persons composing the Corporation of the City of London, were or are members of the different corporate Companies within said City; for defendants say that it is not necessary to be a member or liveryman of any of said corporate Companies, in order to be a member of the Corporation of the City of London; but defendants admit that all the members of the Court of Common Council are now, and were, as defendants believe, in and before the reign of James the First, and have, as defendants believe, been ever since members of some of the Companies of the City of London. Admit that the twelve Companies in bill named were at the time in bill mentioned, and have been ever since, and are now, the principal Companies within the City of London; but defendants deny that said Corporation of the City of London, in making such agreement as aforesaid with the lords of the Privy Council, acted, or were understood or known by said lords to act, on behalf of said twelve Companies, and such of the minor Companies of said City as should join in said undertaking, or any of them, or any other Companies; save that defendants believe it may have been, and probably was known to said lords, that said Corporation of the City of London intended to raise the necessary sum of money for the purpose of carrying on said undertaking, by levying a tax upon said Companies, in manner hereinbefore mentioned and hereinafter more fully stated. Say they do not believe that the name of said Corporation of the City of London, was used, as in bill alleged, for the better transaction of said business, or as the best means to forward said plantation, and raise the money necessary for that purpose from the said several Companies, or for any other purpose, except that it appears to them that the name of said Corporation of said City of London was also



used because they were the undertakers of said scheme, and were to manage the same in such mode as they should think best ; and they were, as defendants believe, to have the sole control over the raising and expenditure of all monies necessary for establishing said settlement or colony, and over all monies to be derived by way of profit therefrom, and were to have civil jurisdiction for preserving the peace and regulating the trade, and in all other respects directing the affairs of said colony, when established. Believe that said Corporation of the City of London did in fact exercise all such powers and control as aforesaid until the foundation of the Irish Society as hereinafter mentioned, to which Society the greater part, but not the whole, of the powers were transferred by charter.

“ They believe that at, or about the time in said bill mentioned, but whether or not precisely on the 3d August 1609 defendants cannot set forth, such Court of Common Council was held, and such order made by the said Court, as in said bill in that behalf mentioned, being the order lastly hereinbefore set forth as of an uncertain date ; and that the four persons appointed by the said Court (one of whom, as appears by the said order, was not a member of any of the said twelve Companies,) proceeded to Ireland to make, and did in fact make, such view as in said bill mentioned—and made their report as in said bill mentioned to the said Court of Common Council, which report defendants believe to have been made at a Court held on the 28th of November 1609. That upon the presentation of the said report, it appears by an extract from the records of the said Corporation of the City of London, and defendants believe it to be true, that a sum of 100*l.* was directed to be paid to the said commoners over and above a sum of 300*l.* which had been voted and paid to them at their departure ; that it appears that such payments were made by the Chamberlain of the City of London out of the funds of the said Corporation. They believe it to be true that the said report was read at a meeting of the said Court of Common Council, held on the 2d of December 1609, and was referred to the consideration of a committee, which made its report at or about the time in said bill in that behalf mentioned ; and that

such report was of or to such purport or effect as in said bill mentioned and set forth, so far as the same is set forth, except that the sum thereby proposed to be raised was 15,000*l.*, and not 20,000*l.*, as in said bill mentioned.

“ They say that the said report is very imperfectly set forth in said bill, and that the same was in the words and figures next hereinafter following: that is to say, ‘ We, the committees appointed by Common Council, held 2d December 1609, to consider of all circumstances and matters fit to be remembered concerning the plantation in Ulster, have met five several days, and long debated and consulted of all things incident to so great a business, and for the better ordering of our proceedings we propounded to ourselves four general heads, under which we handled every particular in its proper place.’ The four heads have been already mentioned. ‘ For the first, it was resolved, although the undertaking somewhat exceeded what was first propounded, yet the sum of money to be expended should only be 15,000*l.*, and which sum was not to be exceeded; and for raising of this sum we held the fittest course to be by way of Companies, and in Companies by the poll,”—not out of any funds of the Company, not out of any corporate funds or estates of the Companies, but by taxing the individual members as a means of collecting and ascertaining what the Companies afforded. The Companies were considered as mere aggregations of individuals, who were to be taxed,—tax-gatherers, &c.—“ and in Companies by the poll according to the rate of corn set upon every Company. But some of the inferior Companies are thought fit to be spared; yet such as were known able men in those Companies to be set proportionably with men of like ability in other Companies. And for this levy an act to pass in this Court,” that is, the Court of Common Council.

Then there are various other points with relation to the demands that they were to insist upon, with which I do not think it necessary to trouble your lordships now. It is quite clear that, throughout, the City was treated as a body with whom the Government dealt, as having supreme authority upon the subject, and as exercising an authority which they

did exercise, at that time of day, to a very great extent, of arbitrarily taxing their own citizens. Then they say "that the Report was approved by the Court of Common Council; and that by an order of the Common Council it was ordered and agreed that the said sum of 15,000*l.* should be advanced to 20,000*l.*"

Your lordships will find, if you desire it, a great deal of information about this corn rate in the papers in the case of the Haberdashers' Company, which occurred in this Court some time ago. The briefs contained very curious extracts from the records of the City of London, showing what the corn rate was. It appears, that at that time it was a sort of engine of finance, more than any thing else, to call upon the City to have a certain quantity of corn ready, which they were obliged to buy up and supply under the pretext of preventing a scarcity; and the City enabled themselves to obey this mandate of the Government by ordering the Companies to collect certain proportions of the corn, so as to make the total quantity which the City were required to have ready; and this was so frequently done, that there was what was called a regular corn rate; that is, the quantity in point of measurement, that each Company was to contribute, so that that afforded an easy measure of the taxability of the members of each Company. And the mode in which the Companies did this was not to apply their own funds to the purpose, but to tax their individual members; and afterwards, when the corn was sold, such of the produce of the corn as came back found its way into the funds of the Companies, but never appears to have found its way back to the hands of those individuals who were taxed by the Companies, and contributed the corn; and that, probably, is one great secret of the wealth of the City Companies. It is the main foundation of the wealth of the City Companies, as I believe. They taxed their individual members to supply the demand which the Government made upon the City, which then made its demands upon the Companies for the corn, and whatever remained, was retained by the Companies, and never went back to the contributors.

In the case of the Haberdashers' Company to which I re-

ferred, a member of the Company feeling for the exactions to which his fellow-citizens, members of that Company, had been subjected by this corn rate, had left a sum of money for the relief of his Company in respect of the corn rate. But when better times, and more regular governments came, the Companies were not taxed in this way ; and one of those useful and benevolent persons in this City, who addict themselves, from the pure love of charity and the public good, without any reference to their own individual advantage, to hunting up old charities, or alleged charities, which his Majesty's Commissioners did not think worth while to prosecute ;—some of those excellent individuals found out this gift for the purpose of the corn rate in the Haberdashers' records ; and accordingly caused an information to be filed in the name of his Majesty's attorney-general, claiming, for the purpose of general charity, to be administered, as they pray, this fund which had been given for relieving the Haberdashers' Company from this exaction. It was decided by the Vice-Chancellor that it was a very odd notion to call it a charity, as it was in fact a pure bounty to the Company to relieve them from the exaction ; and when the exactions ceased, the bounty remained to be applied to their own purpose. The Vice-Chancellor so held ; but I believe his Honour's decision upon it is not reported ; but when it came on, I remember that the brief upon that occasion contained very curious information. The case upon appeal before Lord Brougham is reported in the 1st of Mylne and Keen, page 420, in which Lord Brougham gives a summary of the evidence as to this species of proceeding ; and deals with it, though in better language, as well as more copiously, than I have attempted to describe it. It is sufficient for me to refer your lordships to the case : it will give you a complete view of what the corn rate means, and the manner in which the City of London thought fit to deal with their subjects.

In point of fact, it appears that the City of London, treating itself as composed of a Committee of the citizens themselves, considered themselves as representing the whole City, and having therefore what in effect was a supreme authority over the purses of their fellow citizens ; and they exercised it liberally

and largely, and whenever they thought proper. That at once explains what the corn rate means, and illustrates and enforces the observation which I have just made, that the Government, clothing it certainly under all terms of honour and favour, and the most polite expressions that could be used, never lost sight of their design to force the City of London into this undertaking. The City of London understood the language, and knew the fashion of the Court and of the times, and of course addressed themselves as well as they could to obey. They could only obey by taxing their fellow-citizens; the mode of taxing their fellow-citizens was by the poll; the Companies were collectors of the poll, and they were therefore the means by which the taxation was enforced. That and that alone is the history of the connexion of the Companies of the City of London with this undertaking, which the bill has most inaccurately represented as an undertaking originally by and with the Companies, which representation is altogether against the real state of the fact and history of the case.

My Lords, the answer at fol. 65 states, " that at a Court of Common Council holden on the 8th of January then following, it was ordered that certain Commissioners, in the said order named, who were all of them members of the said twelve Companies respectively, should treat with the Privy Council as to the said plantation, in conjunction with the said four viewers, one of whom was not a member of the said twelve Companies, as hereinbefore is mentioned, and that an immediate taxation should be made of the said sum of 20,000*l.*; and that the said sum of 5,000*l.* being one fourth part of the said sum of 20,000*l.* should be forthwith raised by way of Companies, and in Companies by the poll, according to the corn rate, in the manner and following the words contained in the original Report, hereinbefore set forth with regard to sparing inferior Companies, but yet compelling the able members thereof to contribute. They believe that in pursuance of such last mentioned order, the Lord Mayor for the time being caused a circular precept in these words to be issued: it is very short:—'Whereas, by act of Common Council, holden at Guildhall in December last, it was enacted, granted, and

agreed, that the sum of 20,000*l.* should be expended by this City, in and about and concerning the intended plantation in Ireland, and the same to be raised and levied by way of Companies of this City, and in Companies by the poll, according to the rate and proportion of corn set upon every Company. And whereas, at a Common Council holden the 8th day of this instant, January, it was enacted, granted, and agreed, that one fourth part of the 20,000*l.* of the same, amounting to 5,000*l.* should be forthwith raised, levied, and paid over before the feast day of the Purification of the blessed Virgin Mary next ensuing, unto Mr. Cornelius Fiske, chamberlain of this City, who by Common Council is appointed therefore for the receipt and payment, as well of the said five thousand pounds as of the rest, being 15,000*l.* to be collected as hereafter it shall be required. And whereas, according to the rate and proportion of corn set upon every Company, and by the true intent of the said act of Common Council, your Company is to furnish and pay towards the said 20,000*l.* the sum of whereof one fourth part, amounting to                    is presently to be raised and collected. These shall be therefore, in his Majesty's name, straightly to charge and command you presently to call a Court of Assistants, and then to elect such of your Company as you shall think fit, to join with you the Master and Wardens in the taxing of the said sum of                    by the poll, within this your Company, and presently to collect the said sum of                    being one fourth part thereof, in such manner as in other levies hath been accustomed; and that you pay the same to Mr. Chamberlain's office within the time aforesaid, wherein you are not to fail, as you will answer the contrary. Given at the Guildhall this 9th of January 1609.' Say that the monies advanced by the said Companies were, so long as they were advanced, contributed according to the said assessment of the corn rate, a copy of which assessment, as extracted from the records of the Corporation of the City of London, is in the possession of defendants."

It is not material to call your lordships' attention to that; it is only a collection of figures and numbers affixed to the title of each. They say, "that it appears to them that, in all the

proceedings aforesaid, the said Corporation of the City of London acted by virtue of their general powers over the said Companies, and required them, by virtue thereof, to contribute to the aforesaid undertaking of establishing the said settlement or colony as a public work, the conduct whereof was to be committed to the said Corporation of the City of London."

Then, my Lords, come the articles on the 28th of January, which are mentioned in the printed book, in page 22 and the following pages. The agreement is between the Lords of the Council, on the King's Majesty's behalf, of the one part, and the Committee appointed by the act of Common Council,—on behalf of whom? on behalf of the Mayor and Commonalty of the City of London, of the other part, concerning the plantation, in part of the province of Ulster. And this is the foundation of the subsequent proceeding, and the foundation to which it has been necessary for me to come by the path which I have been obliged to take: "First, it was agreed by the City that the sum of 20,000*l.* should be levied, whereof 15,000*l.* was to be expended on the intended plantation," and so on. It then provides for the building of houses at Derry; "and room be left for 300 more, and that 4000 acres lying on the Derry side, next adjacent to the Derry, should be laid thereunto, bog and barren mountain to be no part thereof, but to go as waste for the city; the same to be done by indifferent Commissioners." Then it contains other conditions;—and I am anxious to draw your lordships' attention particularly to the 7th: "That the woods and the ground and soil of Glanconkene and Killetrough, extending from the county of Coleraine to Ballinderry, be wholly to the City in perpetuity; the timber trees of those woods to be converted to the furtherance of plantation, and all necessary uses within Ireland, and none to be made merchandize." "9th. That the City should have the patronage of all the churches, as well within the said city of Derry and town of Coleraine, as in all lands to be undertaken by them." "14th. That the salmon and eel fishing of the rivers of Bann and Lough Foyle, and all other kind of fishing in the river of Lough Foyle, as far as the river floweth, and in the Bann to Lough Neagh, should be in perpetuity to the City."

Then, 16th, "That the City should have the office of admiralty in the coasts of Tyrconnell and Coleraine, and all the royalties and profits thereunto belonging, and should have their own ships and goods." Your lordships will see that the original proposals were to give an admiralty for a term of twenty-one years, according to the original offer of the council; but the terms made by the City were, that they should have, "in perpetuity, the office of admiralty on the coasts of Tyrconnell and Coleraine, and all the royalties and profits thereunto belonging, and should have their own ships and goods, which should happen to be wrecked at sea, in Ballyshannon and Oderfleete, and in all the coasts, ports, and creeks, along and between them, saved and reserved to themselves." That is a condition very necessary in those days, that the owners of ships and goods should be entitled to them after they were wrecked.

17th, "That the City should have the like liberty of fishing and fowling upon all that coast, as other subjects had; and that it should be lawful for them to draw their nets and pack their fish upon any part of that coast that they fish upon, and carry the same away; and that they have the several fowling and fishing in the city of Derry and town and county of Coleraine, and all the lands to be undertaken by them, and in the river of Lough Foyle, so far as it floweth, and of the river of Bann unto Lough Neagh." How your lordships are to make a partition of these fishings for the plaintiffs, may, or may not, be a subject hereafter to be considered.

20th, "That the City should have the castle of Culmore, and the land thereunto, in fee farm, they maintaining a sufficient ward of officers therein." 22d, "That the City should have such further liberties to the Derry and Coleraine, as upon view of the charters of London, the Cinque Ports and Newcastle-upon-Tyne, or the City of Dublin, should be found fit for those places." Then there are other provisions, particularly the 26th: "That the City should have time, during the term of seven years, to make such reasonable demands as time should show to be needful, but could not presently be foreseen. Therefore provisions and powers, to take effect after the seven years, were to be granted, if within the seven years



it should be found that it would be prudent and right to demand such subsequently, enduring for ever.

Then there is an argumentative statement in the Answer, at folio 81, which is very short, and therefore I will state it:—

“ It appears to them that neither in the said articles nor in any previous transactions between the said Corporation of the City of London, and his said Majesty King James, or his Privy Council, nor in the charter granted by the said King James to the said Irish Society, is any mention whatever made of the Companies of the City of London, or any of them, but that the whole of the said treaty with the said Privy Council was carried on with the Corporation of the City of London.”

Then they admit “ that at a Court of Common Council, held on or about the 30th of January aforesaid, the said articles were approved of and confirmed by the said Corporation of the City of London, but not acting on the behalf of the said Companies of London, or any of them, further or otherwise than hereinbefore appears. And that it was also by an act of Common Council, not acting however on behalf of the said Companies further or otherwise than as aforesaid, but in pursuance of, and conformity with, the said report of the 15th of December 1609, enacted, granted, and agreed, with regard to the formation of a Company for the management of the said plantation as in said bill mentioned and set forth.” And that, my Lords, is the origin of the Irish Society.

My Lords, if you will refer to the book, in page 27, you will find the origin of the Irish Society, in the year 1609, which your lordships will be aware was some four years before the charter of King James, which was in 1613. The sketch of the Irish Society,—indeed the existence, though not the corporate existence of the Irish Society,—dates some four years before the charter, which evidently shows that the Irish Society, in its origin, was a Committee of the City of London. It was afterwards thought expedient to make the Irish Society an independent corporation, — not indeed independent, for your lordships will find that the City of London are visitors, and exercise controlling power over them ; but in their origin, —which illustrates that exposition of the charter which I am

about to state,—in their origin it is plain that the Irish Society were a Committee of the City of London, and the charter granted in 1613 appoints the Corporation to be elected exactly in the way in which that Committee had been appointed to be elected in 1609; in all respects it is the same, to which I shall draw your lordships' attention when I come to the charter.

Here is a sketch of the charter:—"The Court ordered, that for the purpose of conducting the plantation, a Company should be constituted and established within the City of London, which should consist of one governor and twenty-four assistants; and that the governor and five of the said assistants should be Aldermen of the City of London; and Mr. Recorder of the City should likewise be one of the said assistants, and the deputy and the rest of the assistants, should be commoners of the same City; which Company thenceforward in every year should be elected and chosen at the first Common Council to be held after the feast of the Purification of the blessed Virgin Mary; at which time the deputy and twelve of the assistants for the year precedent, might be removed, and one other deputy and twelve other assistants in their steads should be newly elected, to join with the other twelve assistants that were not removed for the year ensuing; and the next year those that continued the year before might be removed, so that twelve of the assistants might continue the space of two years,"—exactly, and precisely in all respects, which the charter always did. The charter, therefore, incorporated the Committee of the Corporation of the City of London, appointed by the sole authority of the Corporation of the City of London.

The book goes on to say that the Court appointed the members of the Society. One Alderman Cockaine was appointed the first Governor; and in page 28 you find the powers confided to them by the City, which were, that they were to "direct, appoint, and command, what should be done or performed on behalf of the City," &c. &c.—"that they should have full power and authority to hold and keep a Court, and in the same to treat, debate, and determine, all matters and causes concerning the business that to them in their discretion should think fit,—and also to direct, appoint, and command, what

should be done or performed on behalf of the City, concerning the said plantation, and also should give direction in England, either by letters or otherwise sent to Ireland, for the ordering, managing, and disposing of all things whatsoever concerning the intended plantation, or any thing belonging to the citizens of London's undertaking in that part of Ireland called Ulster; as also for the receiving, ordering, disposing, and disbursing of all sums of money that were or should be collected or gathered for that purpose, and generally for any other cause, matter, or thing whatsoever, incident to or belonging to the business and affairs in Ulster; and in the Courts to be holden should have full power and authority to nominate and appoint their clerk, beadle, and such other officers as they in their discretion should think fit; and that whatsoever should be done, decreed, or resolved, by and at any such Court, so to be holden, should be firm and stable, and the Court of Common Council thereby declared it ratified and confirmed by them." And the Wardrobe in Guildhall was appointed to be the place of meeting; and certain other directions are given, and the City Chamberlain is made Treasurer.

Now if your lordships should hereafter find any thing defective or obscure in the charter, considering its age and circumstances, you will have, as I humbly submit, to consider with reference to all the circumstances under which it was granted, one of which is its pointed reference to what I have been now reading, and another is the contemporaneous and subsequent usage.

My Lords, I will now, with your permission, return from the book to the Answer. At fol. 84, it is admitted that the Company was thus formed for those purposes,—“ that Alderman Cockaine was appointed the governor; but they deny, to the best of their belief, that all or any of the aforesaid proceedings by the said Corporation of the City of London, were had on the behalf or with the privity or consent of the said several Companies within the City of London, or any of them, save as hereinbefore appears, though defendants admit that the said Companies acceded thereto, being compelled so to accede. However, defendants say they believe that many of the said

Companies complained of the weight of taxation to which they were subjected by the said orders of the Court of Common Council; and in particular, defendants say, that by an act of Common Council made and passed at a Court held on the 19th of March, then next following the said month of January, after reciting that some particular Companies and citizens had made complaint to the Privy Council, that the levy by way of Companies according to the rate of corn, was very unequal, by reason that since that allotment divers Companies were decayed, and others grown to be of greater liability, so as particular men of some Companies were then exceedingly overcharged and others greatly favoured;—it was enacted, that the two first payments of 5,000*l.* each should be forthwith levied and paid, according to the former acts of Common Council, and the precepts sent forth to the several Companies in that behalf; but that a special Common Council should be called, and some other course taken for taxing and levying the two latter payments, whereby the Companies that had been overrated might be better considered of, and eased and relieved, and the other Companies which had been under-rated might be augmented and increased. They believe it to be true, that the greater part of the lands and houses agreed to be granted to the said Corporation of the City of London by the aforesaid articles of agreement, were given or delivered to them as such undertakers as aforesaid, or to the said Company, or Irish Society, formed as aforesaid on their behalf, but not to any of the trading Companies of the City of London; and that the said Society entered thereon, and were possessed thereof: but defendants say, that long after the formation of the said Society, and even after the charter granted to them by his said Majesty King James, as hereinafter mentioned, the said Corporation of the City of London, through the Court of Common Council, without, as they believe, consulting any of the said Companies of the City of London, continued to exercise considerable control over all matters relating to the said plantation; and that they, in several respects, modified the said articles of agreement; and in particular, that at a Court of Common Council, held on the 25th of July, 1610, it was reported

by the said Irish Society, that the Privy Council on behalf of his Majesty had desired the four several measures in the said report and hereinafter-mentioned (that is to say) 1st, That of all advowsons within the county of Coleraine the City of London should have nine, and the Bishop of Derry six, and so after that proportion the City of London and Bishop, in whose sees the same should be, to have the advowsons throughout all the lands undertaken. 2dly, That 2,000 acres of land therein mentioned as parcel of the lands agreed to be given to the City of London by the said articles, should be given up to the king in manner therein mentioned. 3dly, That the lands called the Termon and Erenagh Lands, should be left to the bishops of the several sees throughout all the lands undertaken. And 4thly, That the Bishop of Derry might have the moiety of certain tithes therein mentioned; and it was by the said Court enacted, that the two former propositions should be yielded and assented to, and that the two latter should not be yielded or assented to."

Now this is very remarkable, as a circumstance occurring at so remote a period, with respect to documents and accounts of this kind, that even when the estate in land was to be diminished, when the property conferred upon the undertakers was to be dealt with in this important way, that not one of the Companies is referred to. And the Irish Society, then existing only as a committee, is conferred with on the part of the Government, and reported to the Common Council alone, which Common Council alone exercise their discretion upon the subject, accept many of the proposed modifications, and reject the others, dealing there upon a point of mere property, with the very land and houses which were the subject of the bargain, with absolute power over the subject.

The Answer says:—"That the interference and control exercised by the said Corporation would further appear by divers other acts of the said Court of Common Council when produced, they believe it to be true; that the several sums, at which the Companies in said bill mentioned were assessed as aforesaid, amounting together to 5,000*l.*, were raised and paid by the several Companies to the Chamberlain of the City of

London for the purposes of the said plantation." Then they state, "an act of Common Council was made and passed on or about the 14th January next following the aforesaid 20th of July, whereby such notices or precepts were directed to be given to the several Companies to meet for the purpose of considering, whether they would accept of lands in lieu of the monies by them disbursed, or to be disbursed, as in said bill mentioned: and defendants, from the recitals contained in the act of Common Council next hereinafter set forth, believe that such precept was served, or notice given accordingly, in the said month of January, and not in the month of July 1611, as in said bill mentioned, and that the same were to the purport or effect in said bill set forth."

Then the Answer states, "An act of Common Council made and passed on the 27th day of February then following, and not on the 8th of February, as in said bill erroneously stated, after reciting the previous act of the 14th of January, and that eight of the principal Companies therein named, and not including the said plaintiffs, and ten of the inferior Companies therein also named, had signified their consent in writing to the governor and assistants of the said Irish Society, to accept of lands, and to plant upon the same accordingly, as by the printed books of plantation was required; and that the residue of the several Companies of the said City, in answer to the precepts therein and in the said recited act mentioned, had signified in writing their denials so to do, but had left the disposing of the said lands, and the whole managing of the affairs there, touching their portions, to be ordered by the governor and assistants for the time being," which was then provided, as in the bill mentioned with respect to giving those portions of land. It is at page 34 of the book, on the 17th December, the Court of Common Council. What year was this in?

Mr. LLOYD.—That was a subsequent Common Council.

Mr. JACOB.—The division was after the charter.

Mr. KNIGHT.—I do not see that in the book. This was before the charter; what the book sets out was after the charter. "They say they believe that further sums of money,

making together the said sum of 20,000*l.* originally voted by the said Court of Common Council, were raised and paid by the said several Companies in said bill, in that behalf mentioned, according to the proportions in which they had been assessed, as aforesaid; the latter payments of 10,000*l.* having proceeded upon some new assessment which defendants have not been able to discover, but in pursuance of the act of Common Council of the 19th of March aforesaid. Believe that the same were expenses for the purposes of the said plantation before the 10th of July 1611, and that such act of Common Council was made and passed on the said 10th of July, as in said bill is mentioned and set forth, so far as the same is set forth, save that the further sum of 10,000*l.* thereby directed to be levied on the Companies, was directed to be levied according to the best mode of assessment. They admit that notice of such last-mentioned act was duly given to the said Companies by precept, in manner hereinbefore mentioned; and they believe that all the said Companies answered such notice in manner in said bill mentioned, except the Coopers' Company and Brown-Bakers' Company. Believe, from the information contained in the records of the Corporation of the City of London, that the said two last-mentioned Companies certified in writing that they were unwilling to yield to the said supply of 10,000*l.*, and were contented to lose all such monies as they had formerly disbursed towards the said plantation; and that it was therefore ordered by a Court of Aldermen of the said City of London, held on the 15th of September 1612, that the Chamberlain of the City should disburse and pay all such sums of money as should have been taxed and assessed upon the said two Companies of Coopers and Brown-Bakers for the supply of the said 10,000*l.*, and the City of London were to receive all the benefits and profit, as well already due, as thereafter to grow due to the said Companies from the said plantation in Ireland; and defendants are informed, and believe, that the said Chamberlain did accordingly pay such assessments."

Now, to be sure, a stronger act of power than this, which appears to have been submitted to at the time, it is hardly

possible to conceive. A further sum of 10,000*l.* was required for the undertaking. The Companies are asked whether they will contribute. The Coopers and Brown Bakers do not wish to go on any further; and they say, We will not pay any more. And accordingly the Court of Aldermen made them forfeit in their own favour all that they had before advanced, and all benefit to be derived from it, paying in respect of them what they would have been taxed at to raise the 10,000*l.*; and they take their share, and accordingly have ever since had that benefit to themselves which the Coopers' and Brown Bakers' Company would otherwise have had.

The Answer goes on to say,—“that notwithstanding such payment the Corporation of London did not receive, or continue to receive, the benefit of the shares of said two Companies, in the surplus monies arising from said plantation, after defraying all the charges and disbursements of said Irish Society, in furtherance of the objects laid down in their charters; but that in the year 1724 some communications took place between the said Corporation and said two Companies in respect of the claim,”—with which we need not trouble your lordships. “Believe that the rest of said Companies respectively paid their respective share of said sum of 10,000*l.* to the Chamberlain of the City of London; and that the monies so paid, as well as those paid by the Corporation of the City of London in respect of the shares of said two Companies, were duly applied to the purposes of said plantation, although defendants believe, from the letter of his Majesty King James next hereinafter referred to, that his said Majesty was dissatisfied with the state of said plantation at or about the time aforesaid; for defendants say, it appears by the minutes of the proceedings of said Society, and defendants believe that on or about the 21st of December 1612, his said Majesty wrote and sent to Sir Arthur Chichester,”—which it is not material to trouble your lordships with, but which you will find in the book complaining of the state of the plantation in Ireland. They admit that in the reign of James the First,—“Not only for the purposes in the said bill mentioned, but also in furtherance of the purposes set forth in the original proposals



for such plantation in Ulster as aforesaid, a charter was granted by letters patent, dated the 29th of March 1613,"—to which I believe I am now in order of chronology come.

My Lords, the charter of King James is not printed, but, substantially, I am now reading the charter of Derry, and not the charter of Coleraine. King James's charter to Coleraine is printed. King James's charter to the Irish Society and to Derry, which is all one, is not printed; but, except in the preamble, the charter of Charles the Second to the Irish Society, and to Derry, is the same. I will read it to the Court from the copy I have. It is very material to attend to that preamble.

This is the charter of King James to the town of Coleraine, dated 1613, four years after the Irish Society had been in operation:—"Whereas, there can be nothing more worthy of a king to perform than to establish the true religion of Christ among men hitherto depraved and almost lost in superstition; to improve and cultivate, by art and industry, countries and lands uncultivated and almost desert; and not only to stock them with honest citizens and inhabitants, but also to strengthen them with good instructions and ordinances, whereby they might be the more safely defended, not only from the corruption of their morals, from their intestine and domestic plots and conspiracies, and also from foreign violence. And whereas the province of Ulster, in our realm of Ireland, for many years past hath grossly erred from the true religion of Christ and divine grace, and hath abounded with superstition; insomuch that for a long time it hath not only been harassed, torn, and wasted by private and domestic broils, but also by foreign arms. We therefore, deeply and heartily commiserating the wretched state of the said province, have esteemed it to be a work worthy of a christian prince, and of our royal office, to stir up and recall the same province from superstition, rebellion, calamity, and poverty, which heretofore have horribly raged therein, to religion, obedience, strength, and prosperity. And whereas our beloved and faithful subjects, the mayor, and commonalty, and citizens of our City of London, burning with a flagrant zeal to promote such our pious intention in this behalf, have undertaken a considerable

part of the said plantation in Ulster, are making progress therein. We, therefore, of our special grace, certain knowledge,"—and so on; and then it goes on to make provision, in the language substantially of the subsequent charter, which, as it is printed, I will now proceed to call your lordships' attention to, requesting you to consider me as reading in effect the charter of King James.

Your lordships will find that, as you know, in the appendix to the book in p. 13, and of course pass over the preamble. The operative part begins in page 15. I shall have occasion to call your lordships' attention to the preamble of King Charles's charter, for another purpose. First of all, the king wills, ordains, and declares, "that the city or town of Derry, and all and singular houses, edifices, lands, tenements, water and water courses, and the ground and soil situate, lying and being within the said city of Derry, shall be one county and district of itself, to be called the county of Londonderry." He then provides for the extent of their liberty. He then provides for the extent of the liberty of Coleraine, and establishes corporations in Londonderry, for the purpose of the government of that city; and then follow directions as to the mayor, aldermen, sheriffs, chamberlain, burgesses, and the by-laws of the corporation of Londonderry.

Now, I beg your attention to the middle of page 19, a part of the charter, to which I don't recollect that Sir William Follett,—who said that all the objects of the charter had in effect determined,—I do not recollect that it occurred to him to call your lordships' attention to this. It gives to the corporation of Londonderry power to make by-laws:—"And so that such laws, ordinances, regulations, and constitutions, be certified by the Mayor or Common Council of the said city of Londonderry for the time being, under the common seal of the same city to the Society of the Governor and Assistants, London, of the new plantations in Ulster, hereafter in these presents mentioned and named within four months next after the making of such laws, ordinances, regulation, and constitutions." I do not recollect that this was mentioned; it was stated that the functions of this Society were all expended and extinguished. It is

really to be regretted, that those who have instructed my learned friends should not have called their attention to these parts of the case. “ To the intent that the said Society of the Governor and Assistants, London, of the new plantation in Ulster, or their successors, or the greater part of them, may, under the common seal of the said Society, ratify, approve, and confirm such laws, ordinances, regulations, and institutions, so as aforesaid made, or any of them, within six months next after the delivery of such certificate to the Governor of the said Society for the time being, or his deputy, in our kingdom of England, or else within the same time under the common seal of the same Society, shall adjudge and declare such laws, ordinances, regulations, or constitutions, so as aforesaid made or to be made, or any of them, to be difficult, useless, or improper to be observed in the said city of Londonderry and liberty thereof.” This is the Corporation which the motion calls upon your lordships to annihilate. “ And we will that immediately after such laws, statutes, regulations, ordinances, and constitutions, or any of them, shall be approved and confirmed under the common seal of the said Society; the same laws, ordinances, and constitutions so allowed, shall thereafter be of full force and effect, and from thenceforth for ever inviolably observed under the pains in the same contained; so nevertheless, that all such laws, ordinances, statutes, regulations, and constitutions, be consonant and not repugnant or contrary to the laws, statutes, regulations, or customs of our said realm of Ireland. So that they are not to become general law; but that immediately after declaration, under the common seal of the said Society, that such laws, ordinances, regulations, or constitutions so made or to be made, or any of them, are difficult, useless, or improper to be observed in the said city and liberty, the same laws, ordinances, regulations, and constitutions, so declared under the common seal of the said Society to be difficult, useless, or improper, shall be held and reputed, and from thenceforth shall be repealed and wholly void and of no force;”—giving therefore to the Irish Society a complete and absolute superintending and controlling power over all the by-laws, regulations, and constitutions of the corporation which is to govern the city of Londonderry.

Then follow the provisions respecting the Mayor, twelve Aldermen, Sheriffs, and Chamberlain, and the first twenty-four Burgesses; and then you will find it singularly placed in the Charter, but you will now find the provisions regarding the Irish Society are inserted in the Charter, in the middle of the provisions regarding the city of Londonderry; for it now leaves the matters of the city of Londonderry not fully provided for; it takes up the Irish Society, and then goes back to the city of Londonderry.

In page 21, I entreat your lordships' attention to the first three lines of the section I am about to read: "And for the better ordering, directing, and governing all and all manner of things for and concerning the said city and citizens of Londonderry, and the said county of Londonderry, and the plantation to be made within the said city and county of Londonderry, and other businesses belonging to the same, We will and grant, and by these presents for us, our heirs, and successors, do ordain and constitute, that for ever hereafter"—these words "for ever," we must read so long as it shall please the Skinners Company,—“for ever hereafter there be and shall be, six-and-twenty honest and discreet citizens of our City of London, within our kingdom of England, in form following to be chosen and appointed, who shall be and shall be called the Society,”—and so on.

Then the constitution of the Society is directed, which is in precise conformity, as I have already stated, to what the City of London have done before the Charter. "There shall be a Governor and Deputy and 24 Assistants, the Governor and five Assistants to be Aldermen of London, the Recorder for the time being to be one of the Assistants, besides the five Aldermen, the deputy of the said Governor, and the rest of the same Assistants, be and shall be of the Commonalty of our City of London." Then the Society are incorporated in the common language of incorporations, and they are made capable of purchasing and holding lands in England as well as Ireland in perpetuity, and to give, grant, and assign lands, and so on; to have the power of suing, and to have common seal.

Then, at the foot of page 22, comes the mode;—and to be

sure a better mode for the purpose of preventing abuses was hardly possible to be hit upon. The Society "shall be yearly elected and appointed by the Mayor, Aldermen, and Commonalty of the said City of London, at the first Common Council to be holden in the same City of London, next after the feast of the Purification of the blessed Virgin Mary, at which time the Deputy of the Governor, and twelve of the same persons who shall have been Assistants for the year preceding, shall be removed from the said office, and one other Deputy, and twelve other Assistants, shall be new nominated, supplied, and appointed, into the places of the same Deputy and Assistants, so as aforesaid to be removed, for the aid of the Governor and Assistants not removed for one year next following; and that at the end of that year then next following, such former Assistants, who shall have continued in the same office in the said then preceding year, shall be in like manner removed, and others in like manner new nominated, supplied, elected, and appointed into their places; and so, by an interchangeable course, that twelve of the same Assistants shall be and continue in their places during the term of two years."

Now the Irish Society has ever been constituted and composed under and according to this regulation, and in strict conformity to it. Will any man believe that any serious malversation, or that any state of corruption, could have existed in a fluctuating body thus chosen, thus elected, and thus imperatively changed? My Lords, the thing is impossible. It is true that the course that the thing took exposed the intention of King James to hazard by selecting always members of the twelve Companies, who were to divide the surplus that should not be applied to public purposes. But even that, as I have already said, (and greatly to their credit it is,) even that did not effectually check or impede the working of this most wholesome provision.

The persons who originally composed the Corporation are then named: and I have now to entreat your lordships' attention to the early part of page 24. "And if, and as often as it shall happen, any one or more of the said Society of the

Governor and Assistants, London, of the new plantation in Ulster, within the realm of Ireland, shall die or be removed, or depart from his or their office or offices, all which and every or any of them respectively, not well behaving him or themselves in their offices, we will to be removable, and removed at the pleasure of the Mayor and Aldermen, and of the rest of the Common Council of our said City of London, or the greater part of them (whereof we will the Mayor of the said City for the time being is to be one); then and so often in supply thereof, one or more or so many other like citizens of our said City of London as shall be removed from the said Society of the Governor and Assistants, London, of the new plantation in Ulster, within the realm of Ireland, shall be elected and appointed by the Mayor, Aldermen, and Commonalty of the said City of London, at a Common Council to be holden in the same City of London next, or as soon as conveniently may be after the death, departure, or removal of such person or persons."

My Lords, there are so many other counsel in this important case, that I shall certainly not trench upon a province which may more particularly belong to others who will execute it much better. I shall have, as it is, to trouble your lordships at more length than I should desire; but I must do my duty according to my own understanding of it. It will suffice for me to state to your lordships, that according to the authorities that will be mentioned to you, in the time of Lord Hardwicke, and other authorities upon the subject,—that this language, coupled with the general language of the charter, and having regard to the nature of the institution and the subject, did constitute the Mayor, Aldermen, and Commonalty of the City of London, the visitors of the Corporation which I represent, and which in their original constitution were a mere committee, an emanation of the Corporation at large. For the reason that I have stated I do not myself go into the citation of the authorities upon that subject; I shall be long enough without it, I fear. But I beg your lordships to understand me, as adopting and enforcing that argument, and as humbly insisting before your lordships that the Corporation of London are the visitors of the Irish

Society, and that all the consequences of jurisdiction and of law belonging to that state of things follow, prove it, and must be accordingly looked to by your lordships. At present I need only further say, that there is an additional security, if additional security could be wanted, against corruption or misbehaviour, by giving the Corporation of the City at large—a great popular body—a power of removal for any such misconduct. Then there is an oath of office to be taken by every member of the Irish Society, which is to be taken before the Lord Mayor. Then it directs Courts to be holden. That probably might come more properly in a king's charter than in an order of the Common Council; it only shows the regal powers that the Corporation assumed with regard to its own members. At that time it directs Courts to be held in the Guildhall of London as often as they should think fit; "and in the same Court or meeting, to do, hear, transact, and determine all and all manner of matters and things whatsoever, of, for, or concerning the plantation or government aforesaid, as to them shall seem best and most expedient."

The next section is still more remarkable. "And also in the same court or meeting, shall and may have full power and authority to direct, appoint, and ordain (for, and on the part of the Mayor and Commonalty, and citizens of our City of London, in our kingdom of England) all and singular things, which, for, or concerning the plantation, supply, establishment, continuation and government of the said city of Londonderry, and all other the lands and tenements hereunder in these presents mentioned to be granted, shall seem to be most profitable and expedient. And also to send orders and directions from this kingdom of England into the said realm of Ireland by letters, or otherwise, for the ordering, directing, and disposing of all and all manner of matters and things whatsoever of or concerning the same plantation, or the disposition or government thereof. And also for the receipt, ordering, disposing, and laying out of all sums of money now collected and received, or hereafter to be collected and received, and generally any other cause, matter, or thing whatsoever, concerning the direction or ordering of the said plantation, or concerning any other

things whatsoever, which by the true intent of these, our letters patent, can or ought to be done by them for the better government and rule of the said city of Londonderry and county of Londonderry ;”—meaning the county at large.

Now, let me pause for a moment here, to ask—when you have been told of simple trusts ; when this Society, with your attention called to these clauses, has been termed in the argument a mere conduit pipe ;—let me ask your lordships what is the meaning here of the words “ Sums of money collected and received, or hereafter to be collected and received ? ” What can it mean but the rents and profits ? To no other object can it have application ; and they are expressly directed by their constitution to send orders and directions for the ordering, directing, and disposing of all matters and things. “ And also for the receipt, ordering, disposing, and laying out of all sums of money now collected and received, or hereafter to be collected and received, and generally any other cause, matter, or thing whatsoever, concerning the direction or ordering of the said plantation, or concerning any other things whatsoever ; which by the true intent of these, our letters patent, can or ought to be done by them for the better government and rule of the said city of Londonderry and county of Londonderry.”

Now, let me pause here for a moment, to say—that the Irish Society, as now constituted, and since its hapless reformation in the years 1831 and 1832, have been always ready and willing to tread in the steps of their predecessors ; and after providing for those prior and paramount purposes of public good, which were necessary, according to their honest discretion and judgment, to be provided for according to the true intent of the charter, they were always ready and willing, in conformity with that course which had been adopted, to divide the surplus between the twelve Companies. But the Skinners' Company have now thought fit to file this bill, and it will be now for your lordships to say if this suit should be carried on to a hearing, whether or no this Court has any right or power to direct the diversion of one single shilling of these rents from public purposes and the public good ; whether you can by your decree say that this Society, thus constituted, shall limit their



discretion, that whatever may be their opinion of the exigencies of the public service, of the exigencies of police, either municipal or more extended, or of the exigencies of the Protestant religion in Ireland, they are not to exercise that discretion which the royal charter has given them; but that they are to confine themselves within certain limits, and to hand over—not only a certain surplus, but to hand over every thing for the private purposes, and into the private purses, of the Skinners' Company and other Companies.

Why, my Lords, does it require any argument? If this had been read to your lordships originally, would you have heard me at all? I firmly believe, and I state deliberately in Court what I have stated out of Court, that if this matter had been fully opened and brought under your lordships' attention, there would have been no opportunity for that reply, with a very commendable attention to obtaining which undoubtedly this has been conducted; and I say it to the praise of my learned friend, though I am one of those who entirely agree, if I may respectfully say so, with an observation frequently made by Lord Eldon, that when a judge knows his business, a reply is seldom worth a farthing; and therefore I am one of those who, in many cases, do not attribute so much value to a reply as many do.

My Lords, I repeat my conviction that, if these matters had been fully opened to your lordships, I should have had no occasion to trouble your lordships, or, what is of less importance, myself in this matter. But, however, I must go on.—The Society are to appoint their officers, the times of meeting are to be fixed; and then comes that remarkable recurrence to the corporation of Londonderry which I have mentioned—for in the middle of the provisions respecting the Corporation of Londonderry you will find all this creation of the Irish Society is inserted; and having created the Irish Society, the charter says:—"We also will, by these our presents, for us, our heirs, and successors, do grant and confirm, that the mayor of the said city of Londonderry for the time being, and also the aldermen, sheriffs, chamberlain, and chief burgesses of the same city of Londonderry,"—and so on; proving, by the very

arrangement of the clauses in the charter, the intimate and perpetual connexion of the Irish Society with the government of the city and county of Londonderry, which I have endeavoured to state to your lordships.

Then the following parts of the charter are confined to local provisions, as to the corporation of Londonderry, corporators, and mayor—how they are to be removed, and how they are to be appointed; how the sheriffs are chosen and removable; and very minute and laborious municipal regulations for the corporation of Londonderry, that is to say, there are many pages as to which I need not trouble your lordships, if your lordships will have the goodness to take for granted that, up to page 35, the clauses are such as I have mentioned, and they are very right and material clauses, as far as the constitution and functions of the corporation of Londonderry go.

Then, having disposed of this further matter of the functions of the corporation of Londonderry, it goes back again to the Irish Society, in the latter part of page 35:—"We also will, and by these presents do give, grant, and confirm to the Irish Society and their successors, all that the city, fort, and town of Derry, and all edifices and structures thereof, with the appurtenances in the county of the city of Derry aforesaid, in the province of Ulster, in our realm of Ireland, and also the whole island of Derry;" and then other lands, with a great many edifices, monasteries, the various designations of which *discere non est*, and which it is not necessary to read. They occupy a great many pages. I am happy to say, your lordships may turn over, considering these all as parcels, till you come to page 56, in the middle of which your lordships will find,—“the castle of Culmore, in the county of Donegal, within the province of Ulster aforesaid; and all those lands, tenements, and hereditaments, containing by estimation 300 acres of land, with the said castle and fort, now or late occupied, used, or to the same belonging, or assigned, or to be assigned, with the appurtenances to the said castle, conveniently adjoining. And also all that water, creek, river, stream, or rivulet of Bann, from the high sea unto the pool called Lough Neagh, and the ground and soil of the same; and also the rocks and salmon-leap there, with the appurtenances, and the whole piscary

fishing and taking of fishes, as well salmon and eels as of all other kinds of fishes whatsoever, of, in, or within the said water, creek, river, stream, or rivulet of Bann, and the salmon-leap aforesaid, as well with nets, of what kind soever, as otherwise howsoever, from the high sea unto Lough Neagh aforesaid, and in, through, and within the whole course of the water within the limits aforesaid, being in the said counties of Antrim, Coleraine, and Tyrone, now Londonderry, or every or any of them; and the whole water, bay, river, stream, or rivulet of Lough Foyle, within the limits aforesaid, and the whole ground and soil thereof; and also the whole piscary fishing, and taking of fishes, as well salmon and eels as of all other kind of fishes whatsoever, of, in, or within the water, bay, creek, river of Lough Foyle, as well with nets, of what kind soever, as otherwise howsoever, from the high sea to the town of Lifford:" and to the utmost flux and reflux of the river of Lough Foyle aforesaid, and in, through and within the whole course of the water within the limits aforesaid, being in the county of the city of Derry, otherwise Londonderry, and in the counties of Coleraine, Tyrone, and Donegal, otherwise Londonderry aforesaid, or in any or some of them within the said province of Ulster." And then are granted the "advowsons, donations, free disposition and rights of patronage, of all and singular churches, vicarages, and chapels, of and in the city of Londonderry aforesaid; and of all and singular churches, vicarages, and chapels, of and in the village or town of Coleraine." Then divers other advowsons in the county of Londonderry, which are set out; then the ferries; then certain fee farm rents; and in page 59 are the general words which usually follow the parcels, and in the largest language. Then there are certain exceptions, which commence at page 62; then the *habendum* is in page 64; and they were granted to the Society in perpetuity, rendering certain apportions annual rents to the crown, which are up to this moment payable and paid by the Irish Society, and which, I suppose, it is proposed that when your lordships shall grant a Receiver, the Receiver is to pay.

Then, my Lords, in page 69, in the middle, you will find it thus:—"Further, we will and declare, and the Irish Society covenant and grant with us, our heirs and successors, by these

presents, that the same Society and their successors, for ever hereafter, at their own proper costs and charges, will keep and maintain in the said castle and fort of Culmore, one ward of such and so many men, well and sufficiently armed, and such expert and sufficient officers, in that behalf requisite for the time, by us, our heirs, and successors, from time to time to be named, constituted, removed, and of new appointed, as shall from time to time be requisite and necessary, and may be sufficient for the maintenance, defence, and safe keeping of the same castle and fort; and thereof shall acquit, exonerate, indemnify, and keep harmless, us, our heirs, and successors for ever. And for that, there will be need that great abundance of timber be had and provided for the planting of the premises, and the rebuilding of houses and edifices within the same; and therefore great care is to be had that the timber trees growing, and which may conveniently and fitly serve towards the plantation of the premises, be not carried out of the said kingdom, or otherwise wasted or spoiled there: We have therefore ordained, and by these presents firmly charge and command the said Society of the governor and assistants, London, of the new plantation in Ulster; and the same Society, for themselves and their successors, do covenant and grant to and with us, our heirs and successors, by these presents, that all and all manner of trees, being timber growing, and being of, in, and upon the lands of Glankonkene and Killetrough, extending from the said late county of Coleraine, now Londonderry, unto Ballin Derry, shall be, and for ever hereafter remain, and only be converted towards the plantation aforesaid, and the building of houses and edifices, so as aforesaid, to be made, and to be spent towards other necessary uses of our said realm of Ireland, in the same kingdom, and not for any other cause to be merchandized or sold; any thing in these presents to the contrary notwithstanding."

Now, my Lords, the Crown or Government have never released that covenant or obligation; it stands in full force at the hour at which I am speaking, as between the Crown and all the takers of these lands: and that is one of the points which, now the question has been agitated, must be looked to; it must be considered how far the Society have done that

which was justifiable in attempting to release, as with a view to the public good they have done, the several Companies that have had particular estates allotted to them, from the obligation with respect to timber under which they originally came. But, however it may be as between the Society and the Companies, that must hereafter be looked to. We must consider, with reference to those Companies, how this matter as to timber is to be provided for and arranged. The Irish Society, having only a public duty to perform, are in one sense obliged to them, because it brings under your attention this point with respect to the timber, which I will respectfully promise them shall be looked to. But, my Lords, in another point of view it is most material to recollect what is to be done in the case of a partition, or by a Receiver, or upon that division and total appropriation of these lands to the particular Companies, which is now sought after in respect of this particular provision; as to timber, the consumption of which in Ireland alone, for the purpose of building and rebuilding, is expressly and particularly provided.

My Lords, the charter goes on with a covenant to indemnify the Society against all arrears of the Crown. There is a lease of the customs of Londonderry, and at page 73 there is this grant,—there is granted by the Crown to the Irish Society and their successors for ever, “The office, or place of vice-admiralty of us, our heirs, and successors, and all things which to the said office or place belong or ought to appertain, on all our coasts or shores of Tirconnel, Coleraine, and county of Londonderry aforesaid, together with all and singular rights, liberties, privileges, profits, and hereditaments, to the same office, in any wise belonging or appertaining, incident or appendant, to be exercised by the said Society of the Governor and Assistants, London, of the new plantation in Ulster, and their successors, or by their sufficient deputy or deputies, in the absence of the admiral, of us, our heirs and successors for the time being, any of our letters patent in that behalf heretofore made or granted in anywise notwithstanding.” So that, my Lords, there are to be forty-four vice-admirals of the coast of the province of Ulster, or else they must cast lots for it.

Now this office of vice-admiral has been familiarly granted in

ancient times to corporations, and it is considered so important an office, that I rather think, if I do not mistake, in the recent act of parliament for regulating municipal corporations in England, the corporations newly constituted are all deprived by the act of parliament of the office of vice-admiral. No regulation has yet been made in Ireland, but it shows the importance attached by the legislature to the office. It is an office which at present by law can only be exercised by the Irish Society; it is an office of considerable trust and confidence;—and this is one of the matters which I suppose is to be exercised either by the Court's Receiver, or by such one Company as your lordships may think fit to be appointed as trustees.

Then, in the following section, the citizens of London are granted their own wrecks, to the intent that every proprietor of a vessel shall have and enjoy whatever to himself belonged; and then is granted to the Society license and power for ever thereafter;—"that they and their successors, and all the citizens inhabiting the city of Londonderry aforesaid, and the rest of the inhabitants and residents within the said county of Londonderry, and within the towns, places, and limits before mentioned, to be granted, and every of them for ever hereafter, from time to time, at their will and pleasure, may export and transport all and all manner of goods;"—and so on. Then, towards the middle of page 74, there is a grant to the Society of fishing, fowling, hawking, and liberty to draw and dry their nets, and pack the fish there taken, and to carry it away, and so on.

Then, at the top of page 75, it is provided in this Society "that no flax, hemp, or wool, nor any linen yarn unwoven hereafter at any time,"—(I entreat your lordships' attention to that,)—"be or shall be exported by any person or persons out of the port of the city of Londonderry aforesaid, or out of any port or creek, being within any of the premises before mentioned, to be granted and confirmed into any foreign parts beyond the seas, without the special license of the said Society, or their successors, or of their officers in that behalf first had and obtained. And that in like manner, no raw hides be or shall be transported at any time hereafter, from the said city

of Londonderry, or the port thereof, or from the said port of Coleraine, or from any port or creek within any of the lands, tenements, towns, places, and limits before mentioned, to be granted, into any parts beyond the seas, by any person or persons whatsoever, without the special license of the said Society, or their successors, in like manner first had and obtained, upon pain of contempt of our royal command, and upon pain of forfeiture of the value of the goods and merchandizes to this Society."

The king then covenants to indemnify the Society against all titles under the Crown, and for quiet enjoyment; and particular exemptions in respect of patents and privileges of taxation are given to the town and city of Londonderry, and the town of Coleraine. And in the latter part of page 76, there is this provision:—The king covenants with the Society, and their successors, that the king, his heirs and successors, "will grant to the said mayor and commonalty, and citizens of the city of Londonderry aforesaid, other letters patent, grants or donations to them and their successors, under our great seal of England, or under the great seal used in our said realm of Ireland, severally and respectively to be made, of such further and more ample privileges, liberties, franchises, immunities, and pre-eminences, as upon consideration of the charter of London, the Cinque Ports, and Newcastle-upon-Tyne, in our kingdom of England, or of the charter of the City of Dublin, in the realm of Ireland, or any of them, shall seem to us, our heirs and successors, and shall be found from time to time profitable, convenient, and fit to be used in these parts."

Then, in page 77, the king covenants and grants with the Society and their successors, "full power and liberty to the said Society, of the Governor and Assistants, London, of the new plantation in Ulster, and their successors, that they and their successors shall have liberty and time during the space of seven years next following after the date of these presents, of asking, finding, and having from us, our heirs and successors, such, so many, and any other things and demands reasonable and convenient, as when, and which in time to come respectively, shall seem to us, our heirs and successors, profitable and convenient respectively for the same Society,

of the Governor and Assistants, London, of the new plantation in Ulster aforesaid, and their successors, and for the mayor, and commonalty, and citizens of the city of Londonderry aforesaid, and for their successors, and for every of them." And the king gives and grants to the Society, and to the Corporation of London, "such, so many and the same rights, liberties, franchises, and other reasonable things, as shall seem profitable and convenient;" and covenants to assent to any act of parliament for that purpose, when it shall be desired by the Society.

Then the next clause, at page 78, is also very remarkable. "We give, and grant, and confirm to the Society, and their successors, full, free, and lawful power, faculty, and authority, to make out and ordain, out of and upon the said lands and tenements above, by these presents before granted, or any of them, such and so many several manors of such tenements as are hereinafter limited, as from time to time shall seem convenient to the same Society of the Governor and Assistants, London, of the new plantation in Ulster aforesaid, and their successors; that is to say, that they may erect and ordain one manor of every thousand acres." And they may grant by copy of court roll.

Then, in the middle of page 79, a license is granted to this Society, that they may have and hold within the manors which they were to create themselves, "one leet and view of frankpledge," and a court of felony; and to take the profits. Then, in page 80, waifs, strays, deodands, and goods confiscated, are granted to them; and the corporation of Londonderry is directed to have a Court of Record, to which particular powers and regulations are given and applied, and the town clerk, and so on. These provisions extend over several following pages. There are further provisions for the municipal regulations and exceptions of the city of Londonderry trading there, and the officers, and the keeping the peace in the city and the markets of the city; the oath to be taken by the mayor.

Sir C. WETHERELL.—It may save your lordships' time if you were to read the covenants of the Crown to transfer this charter to an act of parliament. I must read it if you do not. It is the clause at the bottom of page 77.

Mr. KNIGHT.—Perhaps you will recollect it.



Sir C. WETHERELL.—It is at the bottom of page 77, a covenant of the Crown to turn these charters into what is commonly called an act of parliament. “ And further, we will and by these presents of our especial grace, certain knowledge, and mere motion, for us, our heirs, and successors, do covenant and grant to the aforesaid Society of the Governor and Assistants, London, of the new plantation in Ulster, and their successors, that at any parliament, or session of parliament, of us, our heirs, and successors, to be holden within this our kingdom of England, and also at any parliament, or session of parliament, of us, our heirs, and successors, to be holden within our realm of Ireland, when it shall be desired by the Society of the Governor and Assistants, London, of the new plantation in Ulster aforesaid; we, our heirs and successors, will give and grant, and will vouchsafe to give and grant, our royal and free assent and consent to any act, bill, or petition, to be exhibited or preferred by the same Society of the Governor and Assistants, London, of the new plantation in Ulster aforesaid, and their successors, or by any or some of them, in the same parliament or session, or either of them, and to be approved and allowed by the lords spiritual and temporal and commons in such parliament assembled, which may conduce and tend to the establishing, confirmation, and securing, enjoying, conveying, and granting of all and every or any of the premises to the said Society of the Governor and Assistants, London, of the new plantation in Ulster, and their successors, and to the said mayor and commonalty and citizens of the city of Londonderry aforesaid, and their successors respectively; and that they and their successors respectively may have and hold all and singular the premises above by these presents before granted and confirmed, according to the true meaning of these our letters patent.” It is a covenant to pass a bill in the parliament of Ireland and in the parliament of England, to ratify these charters.

Mr. KNIGHT.—My Lords, the succeeding pages, up to 100 and more, are occupied with various powers and regulations relating to the city of Londonderry, which the Recorder tells me are copied from, or are analogous to, similar clauses in the charter of the City of London.

Then, at the bottom of page 101, the king makes a covenant with the corporation of Londonderry, which is prefaced by a recital: "We, being willing that the Irish Society and their successors may have, hold, use, and enjoy, all and singular the castles, manors, lordships, lands, tenements, liberties, franchises, and all and singular other the premises above, by these presents respectively before granted or confirmed, with all their appurtenances, according to the true intention in these presents declared, notwithstanding any ambiguity, defects, or misprisions whatsoever slipped into these our letters patent."—Then it is granted, that whenever any ambiguity and defects in that behalf are made by the attorney general of England, the king will grant further letters patent to the Corporation, to supply and amend all such doubts, ambiguities, or defects.

Then there is a covenant, in page 102, with the Irish Society and their successors; that, "as often as it shall happen, any doubt, question, ambiguity or defect, or any doubts, questions, ambiguities or defects, in these our letters patent, at any time hereafter shall arise or be found, for or by reason that the said castles, lordships, manors, lands, tenements, liberties and hereditaments, and other the premises mentioned or intended by these presents to be granted and confirmed to the same Society, or any of them, are not plainly expressed or granted, with words sufficient and ample enough, or for, or in respect of the misnaming, or misreciting, or not true mentioning or describing of the same premises, or any of them; or the places, territories, or countries in which the same or any of them are situate, lying, or being; or for any other cause or matter whatsoever, so that the said Society and their successors shall be prevented from using and enjoying the same premises, or some or any of them, according to the true intent of these our letters patent, then, and so often,"—upon the petition of the Society and their successors, to the Crown:—then the language follows which was used before:—"that other letters patent shall be granted, to be sealed with the great seal of England, or with the great seal of Ireland, with the explanation, amendment, and supply of the doubts and defects."

Then, in page 103, it is directed, that the Governor of the

Society, his deputy, and all the assistants present, first and future, should take oath before the mayor of the City of London, well and faithfully to execute such office and place respectively. Then the aldermen, burgesses, and sheriffs of Londonderry are to take certain oaths. The members of the Society are also directed to take certain oaths; and that, I believe, is all that is material with which to trouble your lordships upon the letters patent of King James. We find not the slightest allusion to any body but the Corporation and the Irish Society.

My Lords, the charter of Coleraine is that by which the town of Coleraine is still regulated; and it is dated the 28th of June, in the 11th of King James in the same year, 1613. It begins at page 111 of the Appendix to the book: and the preamble of the charter seems the same as the preamble to the charter of Londonderry. It incorporates this corporation of Coleraine with powers, provisions, and regulations, analogous to those relating to the charter of Londonderry; but it differs of course in this,—that the powers of the Irish Society being amply provided for in the charter of Londonderry, are of course not repeated in the charter of Coleraine; and I shall have occasion, therefore, to call your lordships' attention but very shortly to those parts of the charter of Coleraine, confined as it is in respect to those objects, which bear upon my object in the same way as those parts of the charter of Londonderry, to which I called your attention.

If your lordships will look at page 115, you will see the same power and prerogative as to the by-laws of Coleraine given to the Irish Society, which the charter of Londonderry gives to them as to Londonderry, in exactly the same terms as I believe. Page 115 contains those powers, which are substantially the same;—then, in page 117, you will see what even goes beyond the powers given to Londonderry, if I recollect accurately; because, as to Coleraine, it is provided that the election of mayor shall, within ten years, be certified and presented, from time to time, within two months after the election, to the Irish Society, to be approved or rejected by them. It was thought that that town would require more looking after.

Mr. LLOYD.—In the charter of King James as to London-

derry, there was the same provision; but in the charter of Charles the Second that was omitted.

Mr. KNIGHT.—I dare say that Mr. Lloyd is right, because it is not very likely that that would be omitted; and it leads to this observation, that the applying a particular limit in reference to a certain portion of the powers, enforces the argument that, with respect to the other powers, they were intended to be as in the language they are expressed—to be continual and enduring; because, where a limit is intended the limit is expressed; the words therefore, “for ever,” are not incautiously or loosely inserted in these parts of the charter where they are found. I was not aware that the clause as to the ten years was in the Londonderry charter. Your lordships will find that subject carried on in page 118 of the Coleraine charter, and in page 119 as to the Aldermen and Common Council. In page 120 also, and then in page 121, provisions are made for appointing the Lord Mayor, and so on, after the term of ten years; the same provision as to the ten years applies to the Recorder of Coleraine, in page 128 and page 130 also. I do not think there is any part of this charter of Coleraine with which I need trouble your lordships. Now, my Lords, this charter yet exists; that is, the charter of Coleraine exists; the charter of King Charles the Second exists, founded upon and following, in all substantial provisions and in every thing where a particular term or duration was not limited, the Londonderry charter.

Then the Answer, at folio 113, after stating the charter of Londonderry, says, that the charter is in many respects the same as that afterwards granted by King Charles; and they submit to the judgment of the Court, whether the Irish Society became trustees “of the hereditaments comprised in the charter or letters patent of King James the First, or any of them, for said plaintiffs and such other Companies as in said bill mentioned, or any of them, to any and what extent.” They believe that in 1613, the further sum of 10,000*l.* more was levied; they admit that, amongst other profits, the fisheries were given; and then they take up the other matters mentioned. They state, at folio 119, the act of the Common Council of the 24th of June, 1613, appointing Mr. Smithies

and Mr. Springham to go to Ireland. At folio 123, it was enacted " that Alderman Smithies and Mr. Springham should, with as much expedition as might be, address themselves to take their journey to Ireland, and in the mean time, for their better instruction, should consult and confer with the governor, deputy, and assistants of the said plantation, whereby to inform themselves of such things as were most necessary to be remembered in their negotiation." And it was further enacted, with the views aforesaid, " that said commissioners should do all such acts as in said bill are more particularly mentioned, and report thereon to the said Court of Common Council."

Now it is very remarkable that this is done by the Common Council, of their own authority, even after the charter; because the charter creating the Irish Society was in the month of March 1613, and this order of the Common Council was on the 24th of June 1613, exhibiting most clearly the contemporaneous construction of the powers and functions of the City of London with reference to this establishment. They say that Mr. Springham and the other went to Ireland, and " that in pursuance of the general powers, and without any particular directions in said act of Common Council, said Commissioners proceeded on behalf of said Corporation of the City of London, to make arrangements for a division of the lands vested in such Irish Society into twelve parts." Now I need not go through that part of the case again. That has been already fully stated to your lordships from the book and otherwise. It illustrates the alleged title of the plaintiffs, and their title to the lands that have been allotted to them depends upon it. That these gentlemen suggested a division of the lands among the Companies, in twelve portions, according to what they had agreed to. They associated some of the minor Companies with the great ones, to share according to their respective amounts. Lots were drawn, and the parcels conveyed, in 1615, by the license of the king, with certain reservations.

Now, my Lords, this was done a great number of years ago. It was an act of this Society, approved of by the visitors, the Corporation of London; and neither the Legislature nor the Crown have ever complained of that act. But, perhaps, it is not perfectly clear that the Irish Society were entitled to do that at

all. It may not be clear that it was an exactly regular and justifiable exercise of their power, to deprive themselves to any extent of the discretion vested in them, by apportioning any part of the lands to the twelve Companies. I have no desire to shake or question their power to do that act. Nothing can do that, considering the length of time that has elapsed, short of a parliamentary investigation. It is likely that their titles to those allotted portions, considering that they have in many instances been made the subject of sale and conveyance, are valid ; and the probability is, that even those Companies that still retain the possession of their allotments may not be exposed either to an inquiry, how they, upon their separated portions, have carried on the duties imposed upon the undertakers by the terms of the original grant ; or to an inquiry how far the Irish Society were justified in thus allotting the lands. We have nothing to do with this now, and it is probable that their titles may be safe. If the matter were new, however, it is obvious that it would be liable to considerable observation and question ; and it is possible, though not of course on the part of the Irish Society, that that matter may not rest here. That, however, I have nothing to do with.

But to whatever extent the Irish Society may have deprived themselves of that discretion, or limited their means of exercising it, by giving up certain portions of the estates that they held, it is quite clear that it did not take away their discretion as to the residue. It only applied to their means, and probably rendered it, if I may use the expression, more imperative upon their discretion, to consult liberally and largely the public good with respect to their means thus limited and thus restricted. The allotment of the allotted portions left them with less means ; so much the more ought those means to be devoted to the public good ; and I avow that, according to my present impression, if I, as counsel, should ever be called upon to advise the Irish Society with respect to their future administration of the revenues of the estates that have been left, I shall advise them well to consider, not whether the apportionments of money to the twelve Companies, for their own private purposes, ought to be increased ; but whether the fair and just exercise

of their discretion may not require a larger and more liberal devotion to the public good. Undoubtedly that must be considered.

My Lords, as I have said, we are not now to consider whether the Society were or were not justified in making these allotments of estates. It is remarkable, however, that in allotting the estates, there were particular reservations in the conveyances that were made to the several Companies. One will suffice for all, I believe, and therefore I will read to your lordships the conveyance to the Goldsmiths, of the 10th of September, of the 15th of James the First. I will read the reservation in the conveyance to the Goldsmiths' Company of their allotted portion:—"Except, nevertheless, and out of these presents, always reserved unto the said Society of the Governor and Assistants of the new plantation in Ulster, within the realm of Ireland, their successors and assigns, all timber trees growing or being, or that thereafter shall grow, or be in or upon the aforesaid premises, or any part thereof, with free liberty to and for the said Society, their successors and assigns, when and as often as they shall think good, to fell down and carry away the same, and every or any part thereof; and also, except and reserved to the said Society, their successors and assigns, free liberty to hawk, hunt, fowl, and go, ride, carry and recarry over, in and through the same premises, and every part and parcel thereof, at all times convenient; and also, except and out of these presents, reserved all fishing and taking of salmon, eels, and other fishes in the river of Bann and Lough Foyle, within the province of Ulster aforesaid; and in all creeks and members of the same rivers, and either of them, and all the soil and ground of the same rivers, and every of them. And also free liberty to and for the said Society, their successors and assigns, to dig and fence in the premises afore granted, or any part thereof, (except, and other than in the houses, gardens, orchards, meadows, or lands sowed with corn;) for stone, slate, loam, gravel, sand, or other necessary material; and the same to take and carry away, to be employed and converted for, in, and about the buildings in the aforesaid county and province; which premises in and by these presents excepted, or men-

tioned to be excepted, and every of them, and every part and parcel of them, and every of them, the said Wardens and Commonalty of the mystery of Goldsmiths of the City of London, their successors and assigns, do covenant and grant to and with the said Society, for the Governor and Assistants, London, of the new plantation in Ulster, in the realm of Ireland, and their successors and assigns, by these presents, that they, the said Society, their successors, agents, servants, and assigns, from time to time, and at all times, may have, hold, use, take, carry away, and enjoy freely, without let or interruption."

Now your lordships have, I believe, heard, that with regard to that reservation of timber in subsequent years, the Irish Society considered that it would better tend to the preservation of timber, if that reservation were given up; that men would be more likely to cultivate and improve the growth of timber, if they were allowed the benefit of the timber on their estates; because it will be found that the growth of timber had been very much hindered in consequence of that reservation. And therefore, meaning to do their best,—an intention I sincerely attribute to them, although the Society was then conducted by the twelve Companies, who were to have the benefit of the timber growing upon their separate proportions,—it was agreed by the Society that this clause, as to the timber, should be given up. It must hereafter be considered how far that proceeding can be sustained. That clause was agreed in a subsequent year to be waived, in order that those that had the allotments might have their own timber, to encourage them to grow it. It may hereafter be to be considered, how far, having regard to the continuing covenant with the Crown, that can be done. Of course, the Society in its reformed state could not do every thing at once, nor will they be terrified. I do not say, that it is the object of this bill to do so; nor will they be alarmed by any proceedings of this sort on the behalf of the displeased monopolists, from instituting such further inquiry into all the estates, rights, and duties of the Society as may seem to them wholesome and for the public good. They will not be deterred by it. Let those who prosecute this suit think what they will of the matter, one of these



inquiries must be this ;—it will not be undertaken certainly without probably endeavouring to obtain advantage of the opinion of the law officers of the Crown ; this matter of the timber certainly must be considered. But, as I have already stated to your lordships, the right of quarrying, and taking gravel, sand, loam, and so on, throughout any one of the allotted estates, has never been waived. And to this hour, parts of the hereditament which the Irish Society now retain unallotted and undivided, and which are the objects of the present application, are rights to quarry, and take gravel and sand, and other such materials for building, in and throughout not only the undivided estates, but every portion of the allotted estates. It is not, therefore, to be said, that even with respect to the allotted estates, all control and power has been parted with by the Irish Society. They still retain a great power and control of the right of timber, if that has not been effectually given up ; the right of quarrying ; and, if so disposed, the right of sporting over those grounds. Of course, all those considerations will be dealt with by the Society with a due attention, as much to private convenience as to the public good, as far as in duty they can.

My Lords, I have now stated what those conveyances were. I now call your attention to those leases, not merely for the purpose of the observation I have just made, but to show this, that the very Companies who are now raising the present claim (such of them as are unwise enough to do so) did, by accepting those conveyances, recognise the Society as a body which was to continue to hold certain undivided rights, interest, and portions of those estates. The very language of the contemporaneous documents was, that all was divided that was properly divisible. It is the language of the documents, as your lordships have heard, and will hear again. All that was held to be properly divisible, was divided. These very claimants have admitted that that which was then undivided was not proper to be divided ; they have themselves, by their own acts and conduct, retired from the claim to have the whole divided ; they have admitted that some ought to remain undivided, including in that undivided portion not merely the lands not allotted, but rights to be exercised upon and under the lands, themselves allotted, which the very form of the conveyances

left, and means to leave, in the Society, but which the object of the present application is to take from them. Now this is the case of simple trustees that your lordships have heard talked of,—mere conduit-pipes for the purpose of conveyance. Every step throughout the whole transaction, every act of the existence of this corporation, and of those connected with them, contradicts the assertion.

Your lordships have heard what took place after those conveyances, at least in some measure, during the reign of Charles the First and the Commonwealth. Time and breath would not suffice for me, individually, to go over the whole of this case, and therefore I cannot do it if I would, especially as I have several able coadjutors ; but still I fear I have a good deal to say. I shall not, however, go over those particulars again. I was stating to your lordships, and calling your attention to the fact, that the charter had been arbitrarily seized in the reign of Charles the First ; that it had been in effect restored under the Commonwealth ; and that ultimately the charter of Londonderry, thus seized in the manner I have stated, was regranted by King Charles the Second. I have before called your lordships' attention to the argument capable of being founded upon that charter of Charles the Second : with reference to the contention on the part of the plaintiffs' property, that the functions of the Irish Society were temporary merely, and were come to an end. The charter of Charles the Second, following that of James the First in every thing except the limited period of ten years by the charter of King James, which had expired, and which therefore was not a reasonable or fit subject of regrant ;—with that exception, the charter of Charles the Second treats every thing contained in the charter of James as having been rendered valid and established. I have called your lordships' attention to the fact that this charter of King Charles was half a century after the charter of King James ; it therefore was a recognition by the Crown, and a recognition by grant, that the proper functions and duties of the Irish Society were then still fit to be continued, and in operation. It is not confined to a recognition by the Crown, because the very remarkable fact occurs, that the twelve Companies, although they had taken conveyances in the manner which I have men-

tioned under the charter of King James previously to the year 1620, took conveyances again, with the same reservations and exceptions, from the Irish Society, by its constitution and restoration by the charter of King Charles; acknowledging therefore, in the year 1662, in which year that charter was granted, that it was then still fit that the timber should be reserved to the Society; that it was then still fit that the right of quarrying, and so on, should be reserved to the Society; that the right of fishing and sporting should be reserved to the Society; that it was still fit that the town lands, fisheries, advowsons, and other hereditaments, not allotted and not divided under the charter of King James, should, in the time of King Charles the Second, also be not allotted and not divided, but remain to the Irish Society, in order to their continued exercise of the powers and discretion which the Government had reposed in them. We have, therefore, not only the admission of the Crown, but admission of the parties concerned that that was so.

My Lords, whether in the grants of the allotted portions to the Companies, in the reign of James the First, there were reservations of rent, I am not perfectly sure;—I am told that there were, from five of the Companies, for manors created by the Irish Society. In the copy, which I have seen accidentally, that reservation of rent, in one of the conveyances in King James's time, is omitted; but I am told, and I believe the fact is, that the same reservation of rent, which is to be found in the conveyances in King Charles's time, existed in the conveyances of King's James's time. It is sufficient for my purpose that they existed in King Charles's time,—that alone is decisive of the point on which Sir W. Follett has put his case. What, *cestui que* trustees reserving a rent! What were they to do with the rent? Was it for the mere purpose of paying it over? Why did they reserve a fee-farm rent at all from the Companies to whom they made these allotments? the rent was not merely nominal, it was several pounds sterling.

Mr. JACOB.—11*l.* 6*s.* 8*d.* in the case of the Ironmongers.

M. KNIGHT.—That is the one I have before me. 21*l.* 6*s.* 8*d.* was reserved in the Grocers' conveyance. In that time, my Lord, 21*l.* was no inconsiderable sum. In page 70 of the book, your lordships will find several of the rents mentioned:—"These

rents were reserved originally as acknowledgments of the seignorial right, or paramount jurisdiction of the Society. They were reserved in respect of freeholds, granted at 13*s.* 4*d.* each, in the following manner:—

		£	s.	d.
" The Grocers having	32 Freeholds, paid	21	6	8
Skinners . . .	26 . . . . .	17	6	8
Haberdashers .	18 . . . . .	12	0	0
Ironmongers .	17 . . . . .	11	6	8
Mercers . . .	1 . . . . .	0	13	4"

Now, my Lords, what were they to do with these rents? Were they to be merely taken back again? Does not the reservation of these rents prove distinctly that it was the understanding of all parties, that the Society was to be a continuing administrative body? Is not that a recognition by all parties that the Society, as a body, was to continue to receive funds? Is there any trace of an expectation or a notion that the rents were ever to be divided? Is there any trace of an expectation or a notion that what my learned friends themselves have called the indivisible lands and hereditaments, were to be made the subject of partition? Is there any expectation or notion that they were to be divided?

Now, my Lords, I pause a little over this part of the Answer, which states those conveyances and circumstances. But at folio 141 of the Answer, it is stated that the minutes of the order of Common Council, as to the division—I think of the year 1613—conclude thus:—"After all which being done, information was given to this Court by the Governor and Assistants, that is, of the Irish Society, that all the monies formerly levied towards the charge is altogether issued and expended; and that notwithstanding the Companies had their particular shares of land, which were to be managed by themselves severally, that the general work for the building of the rest of the towns and fortifications was to be done at the general charge; and therefore that a further supply must of necessity, with all expedition, be made and provided to proceed on the business. It is therefore a further taxation." They say at folio 153, "that after such division had been made, as aforesaid, of the lands and hereditaments granted to the Irish Society, the City

of London, in the exercise of their superintending control over said plantation, determined to send for the second time Commissioners to Ireland, to view the plantation and the progress of the works therein; and accordingly, in the year 1615, as appears by the minutes of said Court of Common Council, they appointed Alderman Peter Probie, the then Governor of the Irish Society, and Mr. Springham, Commissioners for that purpose, and furnished them with powers;” and, as your lordships have been I believe already told, they proceeded to examine the progress of the plantation and works, and reported upon it to the Common Council. I shall not detain your lordships by going through the report on that subject, which contains many important circumstances. From the report of the Commissioners, which is set forth in the minutes of the Common Council, it appears that the Commissioners attended to every point of their instructions, *seriatim*, and reported their proceedings thereon:—it was in regard to the progress of plantation and the general state of the police and religion in the country. The Answer states, at folio 200, “that it does not appear by the minutes, or otherwise, that the said Companies or any of them questioned the jurisdiction of the Corporation of London so exercised; that the Commissioners at the conclusion of their report stated, (among many things, see pp. 46—48 of the book,) that they had in Derry already laid to certain houses many acres; and that for the free school, they had allotted, when it was done, three hundred acres, which Mr. Springham had promised to build at his own charge the next year.” Thus the Commissioners of the City of London took upon themselves to allot the land for the free school, and Mr. Springham, out of his own funds, contributed to the building of the house; and that Sir Randall M'Donnell had engaged to make good to the general agent, Mr. Beresford, 2160 acres of measureable land, over and above bogs, moss and mountain.” This is stated merely for the purpose of showing the power and control exercised by the City of London.

The Answer, in fol. 203, states the license to alien, which the king had granted, and which therefore, to a certain extent at least if not wholly, justified the allotments made: and the Answer states, that the bill truly suggests a license to hold in

mortmain, dated the 30th of September 1615, but that in the bill a part of the preamble thereof was omitted; and it states that the license contained this recital:—" We therefore, willing, as much as in us lieth, to effect and bring to an end (if so it please God) the said pious and worthy work, and to nourish the happy and hopeful beginning and proceedings aforesaid, begun and prosecuted out of the piety of our said subjects, and to remove, as much as in us lieth, all impediments that in any way may hinder our said subjects in their aforesaid laudable intentions, for the performance and finishing of the said plantation," &c.—Your lordships know it occurred, during the reading of this instrument on the other side, that my learned friends threw out something, in consequence of the looseness of the instructions which has pervaded so much of their case, and their not having been so instructed as to be able to call your lordships' attention to that passage of the license in mortmain which made it discretionary in the Irish Society what they would grant to the Companies;—it had been accidentally read to your lordships as a license in mortmain, rendering it imperative upon the Irish Society to grant certain allotments to the Companies.

Mr. LLOYD.—I beg your pardon; I did not state it in that way.

Mr. KNIGHT.—No; it was only read in that way. Being read without the qualification, it appeared as though it were imperative. Whether it was owing to the darkness of the day, my learned friend did not see it, I cannot say; but it appears that there was a considerable power left to the Irish Society, of deciding how far they would convey or grant any allotments or not.

Mr. JACOB.—It was " such and so many of the lands as the Irish Society should be willing from time to time to grant to the twelve principal Companies."

Mr. KNIGHT.—Yes; the power was discretionary. The Answer goes on to say: " They admit, that in or about the years 1617 or 1618, the Irish Society created separate manors upon each lot of the lands, and soon afterwards conveyed to the twelve principal Companies their allotted proportions. They say that the manor of Lizard was created by deed poll in 1618, which recites the power of the Society; and I think

there is the form of the reservation in the grant of the Society to the Ironmongers of their proportion. Then a feoffment, of the 7th November 1618, to the Ironmongers' Company, is mentioned; and they set out the reservation at length,—that I have already mentioned to your lordships,—and specifying, what I had forgotten at the moment, that *reddendum* of 11*l.* 6*s.* 8*d.*, for seventeen manors created by the Society in the Ironmongers' proportion, at 13*s.* 4*d.* each, as to the existence of which in the conveyances in King James's time I had expressed a doubt. I find it is (as stated in the Answer) in the Ironmongers' conveyance, which is given as a specimen of the rest. Then the Answer, at fol. 227, goes on to state the belief of the defendants, “that manors were created on the other eleven allotments, and conveyed to the other eleven Companies by deeds, which are similar (*mutatis mutandis*) to those hereinbefore set forth, but for their greater certainty as to all said deeds, refer thereto when produced. Say, it appears to them that notwithstanding such conveyances, said Society exercised the right of superintending and controlling the management of said several lots by the respective Companies, in order that the general, public, and local objects of said settlement might be duly carried into effect; and for that purpose they from time to time caused precepts to be served upon the said Companies, both before and after such conveyances as aforesaid, to enforce the better performance of the aforesaid printed regulations to be observed by the settlers upon said plantation or settlement, and required the said Companies respectively to furnish certificates of their works and operations upon the several lots conveyed to them respectively, as aforesaid; which certificates the said Society from time to time forwarded to his then Majesty's Government, in order to satisfy the Government, that the regulations of the settlement had been complied with; and further, that by several proceedings of the Society, as late as the year 1707, it appears to have been the practice of the Society, when any dispute arose between any of the said Companies, to withhold their dividends, and to hear said Companies, by their clerks, argue the matter in dispute.” Your lordships will find, at page 85 of the book, an instance of that mentioned.

The Answer goes on thus :—They say, that the Society exercised,—and in this case, of course, I need not say the practice and usage are matters of the first importance to be attended to :—“they say, that the said Society had a full control over the funds in their hands ; and in particular it appears, by the accounts of the Society, that the Society occasionally advanced monies at interest to the Corporation of London, as by the production of some of the minute books and other documents in the possession of the Society, and to which they refer, will appear.” Then they say, “that after the aforesaid conveyances, the twelve principal Companies, with the assistance of the minor Companies, carried on further improvements, as they were bound to do, on their respective lots ; but that, nevertheless, divers complaints were from time to time made by the king’s Government of the slowness of the proceeding of the Corporation of the City of London, in the completion of the works stipulated to be performed as aforesaid ; and in particular it appears, by the records of the City of London, that at a Court of Common Council, held on the 2d of June 1624, were read sundry propositions of the Privy Council, touching things demanded to be done, and a supply to be made of defects alleged to exist, ‘which are set forth at length in the proceedings of the Court.’ And with regard to Londonderry, the propositions of the Privy Council required, that the eight bulwarks about the City should be built. It required the building of a great many houses, and various other objects connected with the city of Londonderry and its inhabitants.” The Answer, at folio 239, states the answer which the Lord Mayor, Aldermen, and Commonalty of the City returned to the proposition ; and that proposed answer being laid before the Common Council for their approbation, was approved of, and it is headed thus :—“The humble answer of the Common Council of the City of London, to the propositions of the right honourable Lords of his Majesty’s most honourable Privy Council, touching a supply to be made of defects alleged to be in the City of London’s plantations in Ulster, within the realm of Ireland.—Agreed to the propositions with regard to the fortifications, except as to the furnishing of the ordnance carriages, gunner’s powder, shot, and other furniture, which they conceived



they were not tied to by any agreement or contract ; and they humbly prayed his Majesty to furnish the same. And as to the proposed quay, they stated that they had already been at great charge therewith, and were informed by their workmen that it was sufficient, and had lately let it to a new tenant." Your lordships observe, how very clearly the City of London treat these as their charges and their costs ;—every thing in fact to which they here allude, as acts done or to be done, having been since the constitution of the Irish Society the act of the Irish Society : here the City of London being the parties to communicate with the king's government, treat the whole as the act of themselves—the City, although, in fact, it had been done by the Incorporated Irish Society.

Then the Answer goes into the various answers they gave to these propositions, and proceeds thus :—"And whereas it was required that new plantations should be made upon the country proportions, said Common Council stated that they found they had already built more houses thereon than they would have tenants for, unless the natives,"—those who were cautiously excluded by former regulations,—“were suffered to reside therein, or were utterly expelled, as well from the church and servitors' lands adjoining thereunto as from theirs. And touching the removing of the natives, and residence of freeholders, they answered that they had made known his Majesty's pleasure, and their lordships' charge therein, to the several Companies," who had had allotments, as your lordships know ; “and that the Companies should speedily see it performed. And these, their humble answers, they, in all humility, prayed their lordships to accept, and to make a favourable construction of their proceedings in said plantation, which they never desired, but in obedience to his Majesty's pleasure the City of London took in hand, earnestly desiring and endeavouring to give his Majesty content in those things they had undertaken, though to their apparent loss and damage, having by many thousands exceeded the sum at first propounded by the contract ; the chief Companies of London being by this chargeable work impoverished, and having little hope of retribution in any reasonable proportion, for the reasons in said answer more fully mentioned."

Then the Answer goes on to state the proceedings of the Common Council of the 27th of May 1625, with which I do not know that it is very material for me to trouble your lordships, there is so much of a similar character; it is a continuance of the same course of superintendence, the same course of an admitted right of control existing in the City of London, and exercised by them; and the same course of direct communication carried on by the City of London alone to whom the Government looked.

At folio 267, the Answer admits, that "after the conveyances to the several Companies, the ferries, fisheries, and town lands, and also the timber, and rights of fishing, fowling, and hunting, and the other rights excepted out of the conveyance, and also many of the advowsons granted to the Irish Society, remained vested in the said Society, and that the rents and profits of the said ferries, fisheries, and town-lands, were received by the said Society. They believe, that after the allotment and division of such part of said lands as aforesaid, several further loans of money were made by the Corporation of the City of London, for the purpose of completing and keeping up the public and general works of the settlement, and for the general purposes thereof; but that, after the year 1622, no further levies were (so far as the defendants are aware) made on the said Companies for the purpose of completing or keeping up the public and general works of the said settlement: and that the Irish Society thenceforth applied the rents and profits of the said ferries, fisheries, and town lands towards such public and general works,"—that is, from 1622,—“and towards all other the general purposes of the plantation; and that if there were any surplus,”—you lordships observe this,—“if there were any surplus in any year, after such payments as the Society thought proper to make for the purposes aforesaid, then, but not otherwise, such surplus was divided amongst the said twelve Companies as before mentioned; and if there were a deficiency, then that such deficiency was made good out of the surplus rents and profits of the next or some subsequent year.” Then they “say that, as to the amount of such surplus profits since the year 1622, they refer to the account; and they believe it to be true, that the payment of the general expenses of the

plantation had, up to the year 1622 or thereabouts, been defrayed by the Irish Society, partly out of the rents and profits of the hereditaments from time to time remaining invested in them, including the ferries, fisheries, and town lands, and partly out of the sums levied by the Corporation of the City of London, or the several Companies of the said City, who were assessed in manner hereinbefore-mentioned. And that in the year 1623 the Irish Society paid the sum of 140*l.* to each of the said twelve Companies; and that the same were paid in such proportions of 60*l.* and 80*l.*, as the surplus produce of the fisheries for such respective times as in the said bill mentioned. And that from the year 1623 to the year 1832, the Irish Society made divers payments in every year to the said twelve Companies respectively, on account of the surplus produce of the ferries, fisheries, and town lands, after defraying the general expenses of the plantation, which were of the nature hereinbefore in that behalf set forth." And, my Lords, from that year, 1622, to the time when the present bill was filed, in the year 1832, during a period therefore of 210 years, the Society, in the face of the City and of the Companies, and with the knowledge of all mankind interested and concerned in the subject, have uniformly continued to act in that way, and under the same course of proceedings, namely, according to that discretion vested in a body of men—six-and-twenty respectable individuals,—people in a great measure, if not wholly, of station and rank in the City, chosen by the City, and moreover changed, as to the half of the body, annually under the King's charter; a properly constituted body, excluding all probability if not possibility of malversation,—they have continued to exercise that right and power which the Skinners' Company by their bill have denied to them, the denial of which is the foundation of the present application, and which, notwithstanding a practice of 210 years for the public good, your lordships are called upon, on an interlocutory application, to displace.

My learned friend the Recorder reminds me also that the Common Council themselves are included in the term—a popularly constituted body;—for the Common Council themselves are re-elected annually by the inhabitants; there is therefore every species of filtration which could by any possibility or

succession of guards, be devised for the purpose of forming this governing body.

The Answer goes on to state " the various proceedings in the reign of Charles the First, the information against the Corporation of London for the purpose of destroying the Charter; and that in the year 1632, after proceedings, but before the hearing, another information was filed against the Corporation of the Irish Society. But the defendants say that the twelve Companies were not made parties to the informations, or either of them, showing the sense therefore entertained by the lawyers of that day, of the position in which the twelve Companies stood." Of the result of these informations your lordships are aware. A third information was filed in the Star Chamber, in which the twelve Companies were included, alleging that the latter had refused to surrender up their estates, and deliver up the conveyance thereof, so that the twelve Companies were never included or sued until there was an attempt made to get their allotted estates. As long as the informations were confined to the unallotted estates, the Corporation of London and the Irish Society were the only defendants; but when the Crown proceeded to recover the allotted estates which had been conveyed to the twelve Companies, they, as persons so circumstanced naturally would be, were added.

Then various proceedings in that reign are mentioned, which I do not think it necessary to go through. They state a petition in the Commons House of Parliament, and go through the proceedings in the time of the Commonwealth, and down to the Charter of King Charles the Second, which I believe is stated at or about folio 335,—“ more particularly as to the said letters patent of King Charles the Second.” Then they “ admit that the lands in the letters patent of King Charles the Second are the same as were comprised in said charter or letters patent of King James the First.” Then they say—“ that in or about the year 1663 the Society, for greater security, again executed deeds, creating the same manors as had been created after the said charter of King James the First, and again executed such conveyances” to the Companies; and they state that the conveyances “ after the charter of King Charles the Second, after

reciting the charter of King James, and the former grants, recited that the letters patent of King James were afterwards repealed and cancelled in the high Court of Chancery, by reason whereof the said Society and Companies of London and their respective assigns were wholly deprived of all and every the lands, tenements, hereditaments, royalties, franchises, and immunities therein mentioned, and the Irish Society became invalid and were dissolved;" and then it recites "that the late King Charles the First, in the year 1641, of his princely goodness, to the mayor, commonalty, and citizens of the City of London, was pleased to declare his royal will and pleasure for the restoring back to the said Society and Companies all and every the lands, royalties, and privileges in the said letters patent mentioned, and gave his royal command for seeing the same accomplished; but the then late wars and troubles in the kingdom of Ireland shortly after breaking forth, his princely intention took no effect. And the said indentures of release then proceeded to recite said charter of King Charles the Second, and the creation of the manors thereunder by said Society, and the bargain and sale thereof to the said Companies respectively."

My Lords, it is now proper that I should call your attention to the preamble of the charter of King Charles the Second, which of course I omitted to do before. I have now come to it chronologically; your lordships knowing the history of that period, will consider all those statements in the charter as referred by the Crown to the then existing state of things. The charter of King Charles the Second first of all recites the charter of King James; it recites it shortly: it then recites that the Irish Society, by virtue of the license in mortmain, "did grant unto the twelve chief Companies of our City of London, (which had taken upon themselves the greater part of the burthen of the said plantation,) divers great quantities, parcels, and proportions of the said lands, tenements, and hereditaments, according to their several disbursements, and did retain,"—this is in page 14 of the Appendix to the book: the word is here, "discretion in his own hands;" it must be, "in *their* own hands;" this is obviously a misprint,—“in

their own hands, such part of the tenements and hereditaments as were not properly divisible, for defraying of the charge of the general operations of the said plantation." Let it be recollected, that that retention is continued as well as recognised by the charter; as it is printed, "properly divisible," printed here devisable by a mistake,—“for defraying of the charge of the general operation of the said plantation. And whereas the said letters patent were afterwards annulled, repealed, and cancelled, in the Court of Chancery, by reason whereof the said Society of the new plantation, and the said Companies of our City of London, and their respective assigns and undertenants of all and singular the lands, tenements, and hereditaments, royalties, privileges, franchises, and immunities, in the said letters patent mentioned, were wholly deprived; and the corporation of Londonderry, with the Society of the said new plantation, became wholly annulled and invalidated." It then recites Charles the First's promises of restitution; then it goes on thus,—“And for that it does manifestly appear to us that the said Society of the new plantation, and other Companies of our City of London, have expended very great sums of money in building and planting of the said county of Londonderry and Coleraine, to the intent thereof that the said Society of the new plantation, or some other such Society, by these our letters patent, to be created and made, and the said Companies of our City of London, and their respective assigns and undertenants, may, according to their former several rights and interests therein, be restored to all and singular the said county, cities, towns, castles, territories, lands, tenements, royalties, franchises, privileges, and immunities whatsoever, so vested in them, by force and virtue of the said letters patent, and the said several grants by the said Society of the new plantation, and other Companies theretofore respectively made, as fully and beneficially to all intents and purposes, as they might have had and enjoyed the same if no repeal of the said letters patent had ever been had or made. And to the intent that there may be a new Society made of the new plantation in Ulster aforesaid, consisting of the like number of honest and discreet citizens of our City of London as the other and former Society heretofore consisted of; and that a new incorporation of the said

city or town of Derry be constituted ; and for the further and better settling and planting of the said county, towns, and places, with trade and inhabitants." That is the purpose declared in the year 1662, that being the language of the preamble in the charter of King James, and to be found in it. Under this charter the Irish Society have continued to the present hour to exist, and will exist, and will continue to exercise those duties, unless the present plaintiffs shall be able to prevail upon your lordships to extinguish their functions.

The Answer, in folio 342, proceeds to state the belief of the defendants, " that before and since the date of the said letters patent of King Charles the Second, the said twelve chief Companies were respectively in the possession and receipt of the rents and profits of the lands and hereditaments conveyed to them ; that such of the Companies as have not sold their estate and interest in said lands and hereditaments, have been up to the present time, and are now in such possession and receipt." Then they proceed to state certain other dealings of the Companies with their shares :—" that they believe that the Haberdashers' Company, one of said twelve Companies, long since sold and conveyed the lands and hereditaments allotted to them, as aforesaid, or some part thereof, to T. Beresford ; and that in the year 1730, the Goldsmiths' Company, another of said twelve Companies, sold and conveyed the lands and hereditaments allotted to them as aforesaid, or some part thereof, to the then Earl of Shelburne ; and that in the year 1737, the Vintners' Company, another of the said Companies, sold and conveyed the lands and hereditaments allotted to them as aforesaid, or some part thereof, to one Conolly. But defendants do not know what part of such allotments have been sold by said three last-mentioned Companies, nor in whom the parts sold are now vested respectively under and by virtue of said several conveyances, as claiming under said Company. Admit it to be true, that ever since the date of said letters patent of King Charles the Second, they the said defendants, as such Society as aforesaid, have received the rents and profits of the ferries, fisheries, and town lands, subject to the several payments, deductions, and charges hereinafter mentioned ; but as to said ferries, defend-

ants say, that since the building of a bridge over the river Bann, at Coleraine, as hereinafter-mentioned, the ferries of the river Bann have been wholly unproductive, and, that the only remaining ferry, namely, that over Lough Foyle, was in the year 1789 agreed to be demised to the corporation of Derry in perpetuity, at the annual rent of 20*l*.

In folio 347, they “ deny that the rents and profits of the said ferries, fisheries, and town lands, have in each year, since the date of the said letters patent of King Charles the Second, exceeded the expenses attendant on the acts performed by said Society, by virtue of said charter; for defendants say, that in several years they have fallen short of such expenses, whilst in others they admit that they have exceeded them by a considerable balance; but, for their greater certainty, refer to the accounts. They say, that over and above the payment made by the said Society, by virtue of the power specifically conferred on them by said charters, payment has for many years last past been made out of the rents and profits of said ferries, fisheries, and town lands, of a sum of 200*l*. Irish per annum, to an officer called the Governor of Culmore Fort, who is appointed by his Majesty's Government; and of a sum of 250*l*. per annum to the Bishop of Derry for the time being. And as to the first of such payments, defendants say, that by a minute of the proceedings of said Irish Society, dated the 27th of November 1765, it is stated that a report was made by a Committee of said Society as to the original establishment of Culmore Fort, whereby, after setting forth those parts of such charter of King Charles the Second, which relate to said fort, said Committee find that said Society, having surrendered or agreed to surrender to the Crown certain customs, to them granted by said former letters patent, his Majesty was pleased, by letters patent of the 19th of May, in the 17th year of his reign, which would therefore be about 1665, in consequence of the surrender, to release the covenants on the part of the said Society as to Culmore Fort, and to declare for the future that the said Society, over and above the repairs of the said castle and fort, shall be charged only with the yearly sum of 100*l*. for the governor of said castle and fort, towards maintaining a garrison



therein, and providing them with arms and ammunition ; and also with 300 acres of land in said first-mentioned letters patent mentioned :—so that upon the whole state of the case it appeared to said Committee, that the legal estate of and in said 300 acres of land, was properly vested in the Society for trust, for the governor of the said castle and fort, for the time being." I do not know whether the gallant officer, who is the governor of that fort, is among the citizens who are parties to this suit. I do not know who it is.

Mr. JOHN E. DAVIES.—Lord Strafford, formerly General Sir John Byng.

Mr. KNIGHT.—Oh, it is a military sinecure ! I mention this now, because it is an acknowledgment some years after the charter ; for it must have been in the year 1665 that the Irish Society were still a continuing body,—and were a body that were to continue liable to this payment of 200*l.* a year to the Governor of Culmore Fort. They say that they have caused search to be made for the alleged letters patent of the 17th of Charles the Second, but that they have been wholly unable to discover the same ; and they do not know whether or not any such letters patent were ever granted by his said Majesty. As far as they have been able to trace, the sum of 200*l.* Irish, ever since the year 1691, has been paid to the governor of said fort for the time being, who has also been allowed to retain the possession, and received the rents and profits of said 300 acres. They say that, although the fort has, for more than a century, been a mere ruin, yet that a nominal governor has been from time to time appointed : and that there is now a governor thereof, to whom said payment of 200*l.* per annum continues. Then they go on to explain the 250*l.* a year, payable to the Bishop of Derry." Now, my lords, that payment to the Bishop of Derry is under an Act of Parliament as late as the 3d and 4th of Queen Anne. It is set out in page 81 of the book. In the 3d and 4th of Queen Anne, an Act of Parliament was passed, intituled "An Act for settling the right of several parcels of land and other tenements, and of several fishings and tythes of fishings, in the Society of the Governor and Assistants, London, of the new plantation in Ulster, within

the realm of Ireland, and their successors; and for settling a rent charge of 250*l.* per annum upon the Lord Bishop of Derry, and his successors for ever." It proceeds thus:—"Whereas several disputes have formerly arisen between the Bishops of Derry and the Society of the Governor and Assistants, London, of the new plantation in Ulster, within the realm of Ireland; and the same are still depending between Charles Lord Bishop of Derry and the said Society, concerning the right of certain parcels of land and other tenements, and concerning the right of several fishings and tythes of fishing, in the rivers of Bann and Lough Foyle, in the county of Londonderry and in the counties of Antrim, Tyrone, and Donegal, in the kingdom of Ireland, which have caused great trouble and charge to the said bishops and Society, and been the occasion of great heats and animosities among several of the inhabitants of the said counties. Now for the settling and quieting all differences between the said see and Society, and for remedying the said inconveniences, and for preventing the like for the future, the said Lord Bishop of Derry, and the Governor and Assistants of the said Society, do most humbly beseech your Majesty that it may be enacted,"—and so on. This, which is a private act of parliament, discloses who were the parties to the act,—those who had been parties at the commencement of the transactions referred to, and who continued parties; and this proves that the Companies were never thought of as parties,—that the act was granted as between the Irish Society and the Bishop of Derry, as the only parties. And this is a legislative act; it is still stronger than an act on the part of the Crown, creating a Society as a continuing body, with functions to perform, and rights to exercise; and this an act of the British parliament as late as the third and fourth year of the reign of Queen Anne. It is then enacted, that certain hereditaments, the names of which I will not attempt to pronounce, situate in the county of Londonderry, with various other lands, "are hereby vested in the Irish Society and their successors, and shall be held and enjoyed by them against the bishop of Derry and his successors, and all persons claiming by, from, or under them, or any of them; and for a full and ample

compensation to the bishop of Derry, it is enacted, that the bishops of Derry, for ever hereafter, shall have and receive, and shall be seized in the right of their said bishopric, of and in one annuity or rent charge of 250*l.* per annum, payable quarterly at the mansion-house of the bishop, chargeable and charged upon all and every the premises hereinbefore-mentioned, and all other the messuages, lands, tenements, fishings, tythes of fishings, and all other the estate whatsoever of the said Irish Society within Ulster." Then follow these words,—  
 " And be it further enacted, by the authority aforesaid, that when and as often as the aforesaid yearly rent of 250*l.*, or any part thereof, shall be unpaid by the space of thirty days next over or after any of the said feast-days whereon the same ought to be paid as aforesaid, that then it shall and may be lawful to and for the said lord bishop and his successors, bishops of Derry, into all or any of the premises charged or chargeable with the said rent, to enter and distrain, and the distress then and there found, to take and carry away,"—with the usual clauses. It is then enacted,—“that the fee and inheritance of and in one large mansion-house, with the site of the same, commonly called the Bishop's-house, is vested in the bishop of Derry for ever after, and held under a rent payable to the Society. Then the saving-clause is this:—  
 “ Saving to the Queen's Majesty, and all and every other person and persons, bodies politic and corporative, their heirs and successors respectively, (other than the said Charles, Lord Bishop of Derry, and his successors, and the said Society and their successors,) all such right, title, interest, claim, and demand whatsoever, in, to, or out of the said premises, as they or any of them have, or hath, or might claim.”

Now, my Lords, I do beg that the Court will read this act of Parliament; and I would ask, Was it meant that the Companies, the *cestui que* trusts, were to have a right to take from the Bishop of Derry the property thus vested in him? But if the argument of Sir W. Follett is right, that these Companies have the right, the whole of this transaction falls to the ground; for according to their argument they have the interest. But if, as lawyers, we construe this act as they construed it in the reign of

Queen Anne, we deal with the Irish Society as legally and equitably seized of the absolute estate, having the whole control over it; and where the act saves the rights of all parties except the Irish Society, that fixes the claim in such a way as cannot be effected;—that alone appears to me to be decisive of the present question. It is not only a parliamentary exposition, under the authority of the Judges, of the nature of the power and of the estates and rights of the Irish Society; but it is a declaration that, so late as the reign of Queen Anne, the Irish Society was a body continuing to exist, with recognised functions, rights, and powers, which no human being was then foolish or mad enough to question; and if that continued till the reign of Queen Anne—if it continued till that time at which Ireland was in that tranquil state and condition of which Dr. Swift's correspondence so particularly tells us existed at that time;—if at that period, when we know what state the north of Ireland was in, that Dean Swift passed some of the happiest and most tranquil hours of his busy life at Market-Derry, in the neighbourhood of which many of these circumstances occur;—if in the condition in which the north of Ireland was at that time, your lordships find, in the face of that, a parliamentary recognition of the Irish Society continuing and having functions to perform,—I ask, upon that, if it had not ceased then, when did it cease, and why did it cease? I have looked in vain for any reason why it should cease.

The Answer, after stating that act of Parliament, goes on, at folio 365, to say, “ that the sum of 250*l.* per annum has been paid to the Bishop of Derry for the time being, and is still so paid. That whenever there was any excess of the receipts of said Society over all such payments as aforesaid, it appears by the books of said Society.” They admit that it was divided between said twelve chief Companies, on behalf of themselves and the minor Companies associated with them, according to the proportions of their original subscriptions to said undertaking or plantation, and not otherwise, according to their respective interests in said lands and hereditaments, and after deducting from each share the rent reserved to said Society in the feoffments hereinbefore set forth or referred to;

but the defendants submit to this Court whether such surplus balance ought to have been so divided as aforesaid." Then they "admit that the Society has, from time to time, since the date of the letters patent of Charles the Second, and whenever there has been any such surplus as aforesaid, made payments in the nature of dividends on the principle aforesaid, to each of the said twelve principal Companies, in respect of the surplus; and that such payments have varied from 50*l.* the least of such payments, to 200*l.* the greatest thereof, as in said bill mentioned; and that the same have been made by such orders, and for the most part in such form as in the bill stated. That they do not believe that the plaintiffs, or the Companies of London, or any of them, have really discovered any circumstances relating to the accounts of the Society,"—I am now at folio 369,—"inasmuch as, until the said year 1831, some members of the twelve said principal Companies, and until February 1832, a member of the Skinners' Company, had always been a member of the Society, and had free access to all the accounts thereof, and had been cognizant of the actual receipts and payments of the Society during the time of his being a member thereof."

Now, my Lords, you have an explanation at once how this bill came to be deferred till 1832; because the cleansing of 1831 left a member of the Skinners' Company on until February 1832; the repetition of the process of purification, in February 1832, sent the last remaining member of the Skinners' Company out; and in March 1832 Mr. Kensitt's letter is written.—I find in that observation I am inaccurate;—he wrote in March 1831, but it was not till July 1832 the bill is filed. In this state of things I only pause for a moment to ask, when malversation and misapplication of money are talked of, who is talking of them? Have your lordships? His Majesty's Attorney-General? Or are you, the visitors of this Society (the City), complaining that a sufficient sum of money has not been expended in public works and for the public good? That complaint I could understand. I do not understand that, even as the Society was constituted in former days, there has been any serious deviation from the original intention, beyond this, that perhaps the dividends to the twelve Companies were larger, and perhaps less money has been expended than

there ought to have been; but, your lordships have not the public complaining—it is not the Attorney-General complaining—it is not the north of Ireland who complain—it is not our visitors who complain,—but those individuals complain, who, by their acts, have diminished their own surplus. That is the ridiculous part of this case, for ridiculous it is. The Society was always composed of the members of those Companies who were interested in the expenditure of the revenues; and if the members of those Companies chose to expend money in public works—if they thought it proper to reward their servants and the public servants with gratuities—if they thought it proper to have certain pictures painted—if they thought it proper to continue the course of having a certain number of dinners;—to whose prejudice did all this operate? My Lords, this may have operated to the prejudice of the public; but you have not the public complaining here, as I have said before. It did operate to the reduction of the balances, which might have been paid to the twelve Companies, for it was out of their surplus—the governor and members of the twelve Companies might deal with the surplus as they thought proper; and yet, that is the absurd complaint of which we have heard so much during the progress of this cause. Those who have been by their own acts diminishing their own surplus are turned out, and these Corporators are succeeded by other members who never did any one of those acts; and then the old members, who did them, come and complain of these sins of the Corporation, and say that the Corporation as remodelled is to be answerable for these acts of their own:—that is the most ridiculous case which this record presents; and I challenge any one, on a view of these proceedings, to say that that is not a correct view of the state of this cause; and to be sure, if that is correct, it is a most ridiculous view.

But that is not the only answer to this cause. The Answer goes on to state, “ that the Society has been ready and willing at all times to allow free access to their accounts, on the part of any of the Companies interested in the property held by said Society, as hereinafter is more particularly mentioned. They deny that the surplus rents and profits of said ferries, fisheries, and town lands, after paying all expenses attendant upon the acts, in their opinion necessary to be done by the

Society in pursuance of the charter, that for many, or any number of years, may have been, or are now of large annual amount, or that such surplus has ever exceeded the payments which have been made by the said Society to the twelve chief Companies respectively. They contend that said Society has ample discretion under the charters, as to the application of the monies received by them to the purposes contemplated by the charters, and said original proposals for settling the said plantation; and that said plaintiffs are only entitled to such surplus rents and profits as may remain, after providing for all such purposes as, in the exercise of their discretion, the Society may think necessary and proper to be provided for under said charters. They admit that applications have been made at divers times to said Society relative to the accounts thereof, both on behalf of said plaintiffs and also on the behalf of others of said Companies; they say, that upon all such occasions when the said Company have only required access to the accounts, and liberty to copy the same, the said Society has acceded to such request. Your lordships know how this case was opened upon this Answer:—"but that they always declined furnishing copies thereof themselves at the expense of the Society;"—that is all the offence they have committed. They have given free, unlimited, and unrestrained access at all times to these Companies and their clerks, to inspect the accounts, and to take copies of them—that is uncontradicted and incontrovertible upon the present occasion; and all they have done is to refuse to give any copies which any clerk, more or less reasonable, or more or less righteous of one of these Companies, might think it proper in his discretion to ask, to the exhaustion of all the funds of this or any other Society; because if one clerk may demand a copy of one book, he may demand a copy of others, and the whole of the clerks of the twelve Companies may demand the same; and in that case I should like to know how the funds of the Irish Society could exist,—for the clerk of the Skinners' Company has no more right than the clerk of any other Company to demand these copies. I am not aware whether Mr. Bell's opinion is scheduled to the answer.

Mr. JACOB.—They have scheduled a great number of opinions.

**Mr. KNIGHT.**—One of the most instructive is Mr. Bell's opinion in 1825.

**Mr. LLOYD.**—We have not found it among the papers—we never heard of it.

**Mr. KENSIT.**—It is the first time I ever heard of it.

**Mr. KNIGHT.**—That depends upon the willingness as well as the industry of the examiners, perhaps.

**Mr. JACOB.**—It is copied in the letter book. It is a pity they had not seen that before they filed the bill.

**Mr. KNIGHT.**—It is a pity they had not—it is one of the most instructive opinions for directing the conduct of this Society that I ever met with; and I only allude to it now for the purpose of stating that the Irish Society have most certainly confined themselves to acting upon it. They say, “that in November 1824”—I entreat your lordships' attention to this; it was more than seven years before the bill was filed—“that in November 1824, the secretary of the Society received a letter from Mr. Gregg, the then clerk of the Skinners' Company, asking permission to make copies and extracts of the receipts and disbursements of the Society for seven years last past; and that in consequence of such request, it was ordered at the next Court held for the said Society, on the 16th November 1824, that same answer should be given thereto as had been given to a similar application on behalf of the Cloth Workers' Company, namely, that the secretary should inform said Francis Gregg, that the Irish Chambers would be open at any day which he might appoint, to examine and take extracts from any of the accounts required for the use of said plaintiffs. That said Francis Gregg did accordingly attend at divers times, and so often as he pleased, to examine, and did examine and take extracts from said accounts of said Society, without any hinderance or disturbance on their part.” This is, as your lordships are aware, a period of seven years before the filing of this bill, when the affairs of the Skinners' Company were conducted by Mr. Gregg, who I believe was considered a very able member of the profession, and a man of great knowledge and ability. They say that Mr. Gregg was succeeded by Mr. Kensit, the gentleman who now holds the



office, and Mr. Kensit wrote the letter of March 1831. I will not repeat that letter, because your lordships are aware that in another part of my observations I brought it under your attention. They say "that the said Society did not, for the reasons aforesaid, think proper to furnish the accounts required at the expense of said Society, but that it was well known to Mr. Kensit and to the said Companies, that any of the Companies would, upon a proper application for that purpose, be admitted to examine and take extracts from said accounts, and, save as aforesaid, they deny that the plaintiffs had made any such applications." Now that statement of Mr. Kensit must refer to what had passed between Mr. Gregg and the Irish Society, in 1824. One cannot very satisfactorily account for the difference. They were ready to afford every information by inspection of the accounts of the receipts and disbursements of the Society. With respect to any application for copies of the accounts—it was an application which I say ought never to have been made, and which it was the duty of the Irish Society to refuse; but the accounts have been open to Mr. Kensit at all times. There has been no shadow of concealment; and I defy any man to lay his finger on any portion of the case which looks like subterfuge, or any thing of the kind,<sup>2</sup> in the conduct of this Society.

At folio 381, "they admit that up to the month of February 1831, all the persons who, since the institution of said Irish Society, in or previously to the year 1613, have been members thereof, have at all times been members of some of the said twelve principal Companies, but not of the minor Companies in the bill mentioned, unless in one or two instances, when no member of such principal Companies has been a member of the Court of Common Council for the City of London; although it is not required by the charters of the said Society, or either of them, that the members thereof should be members of any particular Company. They say, that at the election which took place in the month of February 1831, the Court of Common Council elected twelve new members of the Society indifferently from the various Companies; and that the same course was pursued in the election made in February

1832; so that, in point of fact, there are now only two members of said twelve principal Companies who are members of the Society. But defendants say, that William Row, jun., a member of the Skinners' Company, continued to be a member of said Irish Society until the month of February 1832. They believe that none of the members of the Irish Society had ever personally contributed to the expenses of forming, establishing, or carrying on the said plantation in Ulster;—but they say that the Society has, in every year, contributed to the carrying on the same out of the rents and profits of the estates vested in them. They say, that many of the transactions in the bill mentioned are prior in point of date to the existence of said Irish Society; and that all matters and transactions on the part of the Corporation of London are totally distinct from the transactions of the Society; and that said Corporation of London acted independently of said Society, and from time to time exercised a separate and independent jurisdiction over said Companies; and that the Society was not party or privy to any other of the transactions in the bill mentioned. Then they admit, that in the year 1713 a great quantity of timber, growing on the said lands and hereditaments in such plantation in Ulster had been fallen, and that the timber had begun to become scarce thereon; and that thereupon the Irish Society wrote and addressed to each of the twelve principal Companies a letter, the effect of which was to give the Companies an interest in the timber on their own estate."

"Then they deny that the Irish Society have misapplied the monies, or any part of the monies received by them since the date of the grant of King Charles the Second, in respect of the rents and profits of said estate, or that the Society have improvidently managed said town lands; but they admit that the Society in the exercise of a sound discretion, and having due regard to the welfare of said plantation, which they consider one of the principal objects of said charters, and during the time that the Society was composed of members of the twelve Companies, did grant leases of the property vested in them by said charters, renewable in perpetuity on payment of a fine to said Society equal in amount to the annual reserved rent;

which fines have always been brought in the accounts of the receipts of said Society, and have been applied from time to time towards the general purposes thereof; and the surplus, if any, has been divided among said Companies, in manner hereinbefore mentioned. They say, that such leases were according to the general custom of letting lands in Ireland, and were required by the tenants, who would not, as defendants believe, have been induced otherwise to effect any improvements on the lands demised; and that such leases were first granted at or about Michaelmas 1767, after mature deliberation, in pursuance of the case laid before Sir James Eyre, the Recorder;”—which in another part of my address I brought under your lordships' attention, and which is printed in the book.

“ Then they state, that several standing orders were resolved on by the Society, on or about the 25th of February 1832; amongst which is one, that no leases shall be granted in perpetuity. They say, with regard to all disbursements whatever made by the Society, that the twelve Companies have in fact been parties thereto, having, up to the month of February 1831, and the Skinners' Company in particular, up to February 1832, been invariably represented in said Society, by some members of their own, who were also members of the Society, the Society having been wholly, or for the most part, composed of members of the said Companies; and they insist that the twelve Companies, and in particular the Skinners' Company, have therefore sanctioned the principle of every payment and disbursement which has been made by the Society, and are, by their long acquiescence, debarred from questioning in any way the principle of any such payments, or the amount of any such payments. They say, that the twelve principal Companies have also had unrestrained access to the accounts of the Society, and in particular, that the plaintiffs have on their part availed themselves of such access; and have, since the year 1824, a period of nearly eight years previously to the filing of their bill, been in the full possession of all the facts relating to any payments or disbursements of the Society; and that they must be held to have acquiesced in all such.”—My Lords, is not that a sufficient answer? The Skinners' Company being

fixed with direct notice and knowledge, in the year 1824, of all the transactions and acts antecedent to that period, and which have wholly, or to the extent of ninety-nine hundredths, formed the whole work of the observations which I have heard,—rest satisfied with that knowledge, and upon that knowledge, until the year 1832; when they alone filed this bill, and made these circumstances the ground of an application for a Receiver.—My Lords, if I know any thing of the course of this Court, that alone would be a conclusive answer to this application on the part of my learned friends.

They say, at folio 395, “that in the year 1822 the Society caused to be printed certain extracts from the minutes of the Society,”—that is, the book, under the title of *A Concise View of the Origin, Constitution, and Proceedings of the Irish Society*,—“a copy of which book was given to each of the members thereof; amongst others, to the various members of the Skinners’ Company, who were from time to time members of the Irish Society; and that a copy of the book was also given to each of the said twelve Companies, and that such book contains statements of every species of expenditure now objected to by the bill of the plaintiffs.” That carries their knowledge two years further back than the year 1824; this book having on the title-page the date of 1822, which is the date also given to it by the Answer. They say, “that the Irish Society has recently, in pursuance of a resolution dated the 25th of February 1832”—mind the date—the date of this resolution, my Lords—“caused to be printed a balance sheet of their receipt and expenditure, in respect of said town lands, ferries, and fisheries for eight years last past, that is to say, from the end of March 1824, to the end of March 1832, and that the expenditure is under the separate items of permanent payments and quit rents.” These printed statements were sent to each of the fifty-four Companies interested. I believe your Lordships have had a copy of one of these printed statements.

Lord Commissioner PEPYS.—No; I have not seen one.

Mr. KNIGHT.—We will hand one up to your lordships. This is what they published as soon as the Society was completely purified.

Mr. JACOB.—I believe that with the paper alluded to by my learned friend, Mr. Knight, ending in March 1832, there are three other yearly accounts, each ending in the month of Feb. 1833, 1834, and 1835, one of which my learned friends on the other side will probably object to; namely, that for the year ending in February 1835, it being an account made out since the time of the Answer to the amended bill was put in. I understand my learned friends to object to that being put in.

Lord Commissioner PEPYS.—This I am looking to is for eight years, ending in March 1832.

Mr. KNIGHT.—It strikes me I have not a right to hand up the whole of these; but that my Lord Commissioner Pepys is looking at, the Court have a right to look at, certainly. As soon as the Irish Society ceased to be close, completely ceased to be close, by the second cleansing of 1832, that was published and printed. The truth is, that the more they assumed the character of public spirit, the more desirous they became of performing their duty openly and consistently, and without regard to self-interest; and the more that is performed, the more grievously offensive it is to the Skinners' Company, and to those who think with them upon the present occasion. And that is a true representation of this case. And to be sure, of all periods, this early part of the year 1836 is the oddest period to select, for the purpose of asking the Court to restore a Corporation to a state of closeness, and to prevent the publicity of accounts, and to facilitate and encourage in Companies the application of public money to private purposes of a political nature; the eccentric selection of such a period for that object amuses me! My Lords, I say that that last paper (namely, the one ending February 1835) I cannot ask your lordships to look at, unless my learned friends choose. I am myself willing and desirous that you should have the whole.

Mr. LLOYD.—I do not think you are entitled to put in any papers except those referred to by the schedule to your first answer. In the schedule to your second answer I do not observe any accounts referred to.

Mr. KNIGHT.—We do not desire to do it, if your lordships will have the kindness to disengage the last paper.

Mr. JACOB.—The latter accounts show a little tendency to improve, which my learned friends do not wish the Court to observe.

Lord Commissioner PEPYS.—It is only the last, I understand, that we are not to see.

Mr. JACOB.—I understand they object to the annual account during the last year.

Mr. LLOYD.—I do not know what it is which is handed up.

Mr. KNIGHT.—They are the annual accounts; the last you have a right clearly to object to, if you choose.

Mr. JACOB.—Here is a copy of them, [*handing over the same.*]

Mr. KNIGHT.—You may look at them; as we are so very wicked, one should think you would not wish to keep from the Court the evidence of our continuance in this wicked way. We do not desire to conceal our conduct, however bad it may have been.

Lord Commissioner BOSANQUET.—At all events there will be one item rather larger this year—law expenses.

Mr. KNIGHT.—Yes, my Lord; but we are in hopes that from the costs of the present application we shall receive a relief from your lordships;—that great injustice would be done if your lordships made the Irish Society pay the costs of this application.—We think your lordships will relieve us from them.

Sir C. WETHERELL.—As my learned friend observes, the costs will fall among five of the twelve Companies.

Mr. KNIGHT.—Yes; they will not affect them when they are divided.—They have no objection to the three first accounts, ending February 1834. My learned friend has a right to object to the last, ending February 1835; and I will detach it.

Lord Commissioner BOSANQUET.—You have done that in the copy handed to me.

Mr. KNIGHT.—The Irish Society has, in pursuance of the resolution of 1832, caused to be printed a balance sheet of eight years' receipt and expenditure; under the heads your lordships will therein see that mentioned which I need not repeat. They say that such printed balance sheet (that is, No. 1 of these papers) was delivered to such of the said twelve Companies as required the same; but, for their greater cer-

tainty, defendants refer thereto when produced. With regard to the payments made to the individual members of the Society, the defendants deny that, save as hereinafter mentioned, the Irish Society has applied large, or any sums of money, for the individual use and benefit of the members forming said Society; but the allowances to members attending Courts appear in that paper. I understand, the total allowance for eight years.

Mr. JACOB.—Each year is stated separately.

Mr. KNIGHT.—This will illustrate the great emoluments of which those members have availed themselves. They deny that they have paid large sums to individual members; but they say that it has, for a very long period, been the practice of the Society, as it is the practice, I believe, with other corporate bodies in the City of London, and in particular of the plaintiffs, some members of which Company have assisted thus to diminish their property. I do not at all complain of it. But they have themselves paid for attending to their own concerns, to the diminution of their general funds;—they have eaten a few of the dinners, which others eat besides themselves. I say, it has been the practice of the plaintiffs to allow certain fees to be paid to their members attending the Courts of the Society, and to whom they pay no salary for attendance at such Courts. “Say, that it appears by the accounts of the Society that, in an average of eight years last past, as appears by the printed balance sheet, the whole annual amount of such fees has been 426*l.* 13*s.* or thereabouts,”—and that for a Society consisting of twenty-six persons. “And the defendants say, that it appears to them, in the year 1682 a resolution was passed by the Society, to the effect that the members attending the Courts should receive certain fees for their attendance; and such practice has existed ever since that time, if not from an earlier period.” And this is one of the complaints which is made against us—against us who, as individuals, have had no existence beyond two years. As to the oldest of these, they say—“There are entries in the account books of the Society for payments made to the members of said Society in 1690, 1691, and 1692, in respect of such attendances, under the head of, ‘Paid the accustomed allowance to the members of the Society, for Courts and Com-

mittees, amounting to 54*l.*, 48*l.*, and 59*l.*, in the said years ; and that there are similar entries in subsequent years ; but for greater certainty herein, defendants refer to the accounts. They say, that from the first foundation of said Society, the expenses of journeys to Ireland by members of the Society, connected with the objects of said Society, have been defrayed out of the funds applicable to the purposes of the plantation, and after the letters patent, and as appears by the several orders of Common Council, appointing Commissioners to visit the plantation, as thereinbefore mentioned.

The defendants also say, “ that it has for a long period been the practice of the Society, as it is the practice of most of the Corporate Companies of the City of London, and in particular of the plaintiffs, to join together occasionally, on some of the Court days, and to defray the expenses of such dinners out of the funds vested in the Society as aforesaid, all which payments have been known to and acquiesced in by the said twelve Companies,” (the Answer might have added, eaten by the twelve Companies,) “ and the said plaintiffs, as herein mentioned ; and the defendants admit that large sums of money in the whole, upon a long series of years, have been applied to those purposes.” Now, my Lords, really it is rather hard to attribute to the stomachs of the twenty-four Assistants who are at present in the Corporation the dinners of two centuries. My Lords, even the Court of Aldermen could not bear that : the Court of Aldermen, if one were to propose to fix them at once with two centuries of dinners, would start back. There is no alderman, deceased or living, great as have been the powers attributed to them, who would not reject such a thing ; and, as my learned friend the Recorder says, they expect your lordships also to swallow this—a monstrous swallow, for it is rather too absurd to be addressed to reason. The charging the members of the Companies, who compose the present Society—for it must be done if they mean to make any thing of it—with all the dinners which have been going on for this course of centuries, is ridiculous, if it is not worse ;—but the thing itself is a trifle. I know not that it is wrong—your lordships cannot say that it is wrong—at all events, it is a



course which has been long adopted. But if the visitors should say, we cannot adopt this course, disapproving this mode of remunerating the labours of the Society, which consists in an occasional dinner;—if this species of puritanical excision of these accounts is to take place, the order will be obeyed; but at present the Irish Society do not see any sufficient reason for departing from that which has been the course of the Society for so long a period, and is the course of all other public bodies. The amount is trifling, undeserving the consideration of any fair and liberal men, considering such matters. They do not mean to discontinue it, at the same time, having regard to moderation and propriety, certainly not meaning to expend a sum equal in comparison to that expended for the same purpose in the reign of Queen Anne. But if any intimation shall be made by your lordships, or any proper authority, that it should be discontinued, that intimation will be obeyed,—it will be an alteration which, however, I can prophesy will not ensue to the benefit of those who make the complaint, but to the benefit of those whom the Companies seek to deprive of every thing, namely, the public in the north of Ireland.

They say, “that they deny that in the matters aforesaid, or otherwise, the Irish Society has unlawfully or improperly expended any sum or sums of money; but they admit they have properly, and for and in furtherance of the purposes for which the said Society was founded, endeavoured to recover certain advowsons, the presentation whereof has, as defendants believe, been usurped by other parties not entitled thereto, and that said Society has incurred law expenses in such proceedings. And defendants admit that they have not, and submit that they ought not, to have submitted such proceedings to the consideration of said twelve Companies, or other Companies in the bill mentioned, or any of them, or required their consent, otherwise than as they were represented in the Society.” And they say,—“that so early as in the year 1716, applications were made to the Society by the Merchant Tailors’ Company, for the assistance of the Society against the Bishop of Derry, as having wrongfully presented an

incumbent to a particular advowson, as by the records will appear; and say that the suits undertaken by them as aforesaid failed of success, in consequence of the difficulty of procuring evidence against the Bishop of Derry, but that same were undertaken upon mature deliberation, and with the advice of counsel ;"—and so on.

Then they say, "that the proceedings of the Society with relation to said advowsons were communicated in courtesy, as aforesaid, to the twelve principal Companies by a written letter from Henry Schultes, the then secretary of the said Society, (a defendant in bill named,) which letter was written and sent by the secretary, in pursuance of resolutions of the 24th day of November 1830; when it was resolved, 'That this Court in making a dividend, do take this opportunity of assuring the twelve chief Companies that the Society's constant attention has been devoted to the fulfilment of the important trusts confided to them by their charter for the improvement of their plantation in the province of Ulster.'" Now I entreat your lordships' attention to the fact, that this is a resolution bearing the date of November 1830, when the Society was composed exclusively of the members of the twelve Companies—those members of the twelve Companies including of course members of the Skinners' Company. They state that which I have read; namely, "that the Society's constant attention has been devoted to the fulfilment of the important trusts confided to them by their charter for the improvement of their plantation in the province of Ulster." Is it to be endured that, after a resolution of that kind, come to by persons in this situation, they should instruct their counsel to use the arguments which have been used by them on the present application? "That in furtherance of this object, and to recover very valuable rights which have been long usurped, particularly the patronage and right of presentation, to a considerable number of advowsons granted to them by their charter, as well as to establish their conservative jurisdiction over the corporations of Londonderry and Colerane,"—your lordships observe, they do not use the word *conservation* here in an offensive sense at all, only a conservative jurisdiction in a legal sense over the Corporations. I

believe the word had hardly got into fashion in its modern use at that time ;—“ the inhabitants of which latter place (Coleraine) having earnestly solicited the Society to assert their authority for the restoration of their chartered and corporate rights, this Court have found it necessary to send frequent deputations of their members into Ireland in order to carry their measures into effect. That in perusing the means of recovering the said advowsons, it has been found necessary to make searches for ancient records and documents, at a very considerable expense.” Then they mention the nature of the proceedings taken for the accomplishment of those objects, as having precluded the Company from making more frequent dividends. I am now at folio 415. I pass over this passage, of which there is a great deal in this case : “ That the principal duties incumbent upon the Society being to establish and endow schools for the benefit of rising generations, to assist in the erection of places of public worship, and also to promote all charitable institutions for the relief of the poor. The Society have contributed largely towards the accomplishment of these objects.” That is the same resolution of 1830. They say, those circumstances have prevented their making more frequent dividends ; but “ it is gratifying to the Court to inform the Companies, that the beneficial objects contemplated by the Society are more likely to be attended with the desired success, and that whilst through their management and direction the estates are greatly improving in value, the local rights and franchises of the tenantry are maintained, and the general welfare of the whole plantation promoted, which has been confirmed not only by the attestation of the most distinguished personages connected with the executive government, but also by the general voice of the public in Ireland.” Your lordships observe that this resolution proceeds from the Society as constituted upon the old plan, but just upon the eve of that which they then saw coming, namely, the impending change in February 1831 ; and I cannot help considering that the proximity in point of date between the resolution of November 1830, and the City of London Corporation Act of February 1831, is not without a meaning. It shows, however, what those members

of the Corporation, who then probably suspected that they were not unlikely to be removed, thought upon what was the proper representation of their duties, their functions, and their acts, which they considered agreeable to truth and honesty, and likely to place them well before the public. They found, however, it did not answer;—those professions of duty and liberality and disinterestedness and propriety, made at this late period, did not keep them in their seats;—they were ejected, half in 1831 and the other half in 1832; and then they file a bill, and in that bill state, and instruct their counsel to state, a case diametrically in letter and in spirit opposed and contradictory to the whole tenor of that resolution by which they hoped to stay in this Corporation, and which they then passed and published to the world. That is the course of conduct of these persons; they cannot escape from that. The resolution of November 1830 was honest and was full, but it was not attended with the beneficial act of preventing the change: the consequence has been, your lordships have heard the Skinners' Company, I am sorry to say, with the assent of some other Companies, who ought, as well as the Skinners' Company, to have known better, make an application of a nature which it has been my duty to expose in opposition to that contained in this resolution. Any thing less creditable I confess, for one, I never knew occur; and I regret deeply that public bodies of respectability should be induced by motives of self-interest to lend themselves to such a course of proceeding.

The Answer goes on to say, “ That the Secretary accordingly wrote and sent letters to the twelve Companies, enclosing the above resolutions, to which many of the said Companies sent written answers, through their respective clerks, to the said secretary of the Irish Society, and that part of the answer of the clerk of the Salters' Company,”—May I beg to ask who appears for the Salters on this occasion? I want to know whether Mr. Wigram appears for the Salters' Company, whose clerk officially wrote this letter.

Mr. KENSIT.—No; Mr. Walker.

Mr. WIGRAM.—I think it is Mr. Walker.

Mr. KNIGHT.—“ Salters' Hall, Dec. 20th, 1830. Gentle-

men, I am directed by the Master, Wardens, and Court of Assistants of the Salters' Company, to acknowledge the receipt of your letter of the 24th ult. enclosing a copy of resolutions passed at a Court of Assistants of the Irish Society held that day. The Court of Assistants of the Salters' Company are much gratified to learn that the exertions which the Society have been making for the amelioration of the condition of the tenantry and inhabitants of the county of Londonderry, have been attended with success." And the said letter concludes with a desire of the inspection of the records and papers of the Society, as the member of the Salters' Company, who was in the Court of the Society, was not in the Court of the Company,' which at once shows that the members of the Court of Assistants of the Companies, being members of the Irish Society, formed a medium of communication between the Companies and the Irish Society, by which a knowledge of all their proceedings was transmitted; the reason being, that the member of the Salters' Company, who was in the Court of the Society, at that time was not in the Court of Assistants of the Company.

Mr. LLOYD.—It does not appear that any member of the Company was a member of the Irish Society, and it is not so stated in the Answer.

Mr. KNIGHT.—You may have all the advantage of that. Now who appears for the Haberdashers?

Mr. KENSIT.—Mr. Wigram.

Mr. KNIGHT.—Mr. Wigram appears for the Haberdashers, and therefore in support of the present application; and adopting all Sir W. Follett's speech and arguments, and his own speech and arguments, as counsel for the Skinners' Company. The defendants say that the answer of the clerk of the Haberdashers' Company, written by the order of the said Company, contained the following passage:—"I am directed by the Court of Assistants of the Haberdashers' Company, held this day, to express their thanks to the Court of the Irish Society, for the communication of the resolutions, (which are directed to be entered on the Company's minutes;) and at the same time to evince their high sense of the zeal, energy, and perseverance of the said Society, in bringing their investigation to so favour-

able an issue." Now mark what these resolutions contained ;— a declaration of the public duties, the public functions, and the public interests, committed to the charge of the Irish Society ; a statement of what they had done, and what they felt themselves bound to do, is communicated to those Companies ; and this is one of those very Companies who appear now with the Skinners' Company, to support the argument Sir W. Follett has urged : contradictory in every line and word to this very resolution, that very Company are here unjustly complaining of the persons uniting in those resolutions. My Lords, I feel myself obliged to say that is very improper conduct—conduct which cannot be justified. They come here into Court openly repudiating their own acts, and making a claim which they have, by their own act, declared to be unfounded. This is wrong, — in every sense, wrong. Who appears for the Drapers ?

Mr. WIGRAM.—I do.

Mr. KNIGHT.—Mr. Wigram again :—" Say that the answer on the part of the Drapers' Company, who thanked the said Society for their activity,"—your lordships know in what that activity has been stated to consist,—“ and that no complaints were made of the conduct of the Society by any of the said Companies on the said occasion ; but, for the greater certainty as to said resolutions and letters respectively, defendants refer to the minutes of the Society and to the said letters respectively when produced.” So that in December 1830, those Companies transmit letters by their clerks, remarking on the satisfactory nature of those resolutions, stating the rights and interests of the Irish Society, stating their rights to be those which I their counsel have argued and contended. This was in December 1830, on the eve of that removal, which took place in February 1831. Whatever was the motive of this conduct, whether or not they were influenced by a desire to continue the monopoly in those Corporations, I will not say ; but it so happened, that not one of those Companies, the Skinners or others, said in answer,—“ Why, what do you mean by this assertion of public duty and public function ? you are simply a conduit-pipe ; your functions are all gone, if you ever had any ;—not one of them says so.”

Those who do not receive this declaration in silence, send letters of approbation, accession, and sanction, to all which it is represented that the Society had done or intended to do; and then, in support of a bill, filed in 1832, your lordships hear the arguments you have heard made use of on behalf of the Skinners' Company, supported by some other Companies. If such conduct can be justified, let it be. I am not aware how it can be done.

The Answer, at page 421, goes on to state:—"That the defendants believe it to have been the practice of the Society formerly, but not for one hundred years last past, to give public dinners to the Lords Lieutenant of Ireland and other public characters, in which large sums of money have been spent in the whole, at very distant periods: and in particular"—this is all in answer to the charges against us, made by those who know every thing, as well as the dates of those proceedings;—"and in particular, the defendants find by the minutes of the Society, that on the 2d of October 1689, a sum of 25*l.* was paid by the Society for an entertainment given to Mr. Walker;"—and I am sure that the dinner was very well given to that most eminent person,—“being, as these defendants believe, the Reverend George Walker, who is celebrated for his defence of the city of Londonderry against the papists, in the reign of King William the Third; and that, in the year 1703, the Duke of Ormond, who had been appointed Lord Lieutenant of Ireland, and invited to dine with the said Society, and who paid for the expense of such dinner the sum of 234*l.* 7*s.* 6*d.*; and by an entry in the minutes of said Society of the 8th of May 1706, it is stated, that said Society went in a body to congratulate His Excellency the Earl of Pembroke, Lord Lieutenant of Ireland, on his appointment, and to invite him as usual on such occasions to dine. They say, but save as aforesaid and occasional dinners on the Court day of said Society, and a dinner given by said Society in the year 1831 to the said Lord Mayor and Sheriffs of Dublin, who were then in London, defendants deny that any sums of money have been spent by said Society in tavern expenses. They deny, that except such expenses as for attendances and travelling expenses as aforesaid, any sum of

money has been spent by said Society in fees to the members thereof; and defendants admit, that divers large sums of money have been spent by said Society, under the name of gratuities to various charitable and public bodies, in pursuance of the purposes of said charities, and for the benefit of said plantation; and also to various individuals who, from time to time, have by their exertions advanced the objects of the Society and the plantation. Say, that it appears by the entries in the minute books of the Society, and by their accounts, that in the year 1689 divers gratuities were voted by said Society to persons who had distinguished themselves in the defence of Londonderry against the papists; and in particular, a sum of 20*l.* to Colonel Forward, 10*l.* to Captain Francis Neville, and 100*l.* to Colonel Michelborne; and that divers other sums of money were also given by said Society for the benefit of the sufferers by the siege; and in particular a sum of 500*l.* was forwarded to Alderman Mainwaring, of Chester, to be sent by him to Londonderry, to be distributed amongst the tenants of the city of Londonderry who had suffered by the siege; all which payments were made out of the general funds of said Society. And defendants say, that in every year from 1689 down to the present time, so far as there exist any accounts of the disbursements of said Society, it appears that divers sums of money have in like manner been voted for public services and charities, to be paid out of the funds of said Society; and that all such orders were made during the time that said twelve Companies were represented by their members being members of said Society; and in particular defendants say, that, by an entry in said accounts, dated April 1692, two several gratuities of 10*l.* 17*s.* and 5*l.* 8*s.* appear to have been paid to Robert Rochford and David Cairnes respectively, and other gratuities of an ancient date are stated and explained.

“They say, that it appears from the books of the said Society, they believe that said sum of 90*l.* 10*s.* per annum has ever since been, and is now paid yearly to the said corporation of Derry; that in almost all, if not in all, the years from 1689 downward, there are divers similar entries as to gratuities,” and so on. My Lords, I passed over that which I ought to have



stated, at folio 431, namely, that the corporation of Londonderry having disclosed to said Society their right to said quarter lands, the Society resolved to allow the said corporation the sum of 90*l.* 10*s.* per annum in perpetuity, as a reward for such disclosure, if such should be established; and that seems to have been since established. They say that they admit, during the period when said Society was composed wholly, or for the most part of members of said twelve Companies, divers sums of money, but not to any great amount in the whole, have been spent by said Society in payment for the portraits of members thereof, who have by their zeal and activity benefited said plantation; and which portraits have been painted in order to be placed, and have been placed, in the chambers in which the meetings of said Society are held. That the number of such portraits amounts to eight only,"—that is, about four in the century;—"and that the first thereof was painted in the year 1735, being that of James Brace, secretary of said Society, and the last thereof in 1821; and that all such portraits are of members of some of the said twelve Companies;"—and if the Companies wish to have the portraits of their respective members, I dare say the Irish Society will spare them, if they have any niches to fill up, and they wish to have this illustrious obscurity transferred to their own Companies, and these portraits hung up in their own halls. I have no doubt the Society will spare them that.—"And that the payments made in respect thereof do not, as these defendants believe, exceed the sum of 500*l.* in the whole. They deny that the Society have ever expended any sum of money in the purchase of plate for the use of the Society; but they admit, as hereinbefore mentioned, that the Society has from the earliest period of its existence defrayed the expense of their members' visits to Ireland for the purposes of the Society, and have also occasionally presented to the members of the deputations, and to others, pieces of plate for extraordinary services; and that by the minutes of the proceedings of the Society, it appears that in April 1740 a piece of plate was presented to Alderman Lecky, for his services to the Society; and in November 1763 to Alderman Alsop, governor of the

Society, for his services; and in October 1765 to the mayor of Londonderry; and that in other years occasional entries are found of a similar nature."

My Lords, I have for the sake of illustration made a reference to Alderman Alsop's case in the printed book, and I shall therefore refer for the purpose of reading the resolution upon which that proceeding took place. It is in pages 120 and 121 of the printed book. I merely read that for the purpose of illustration of the real facts of these mean, and miserable, and paltry complaints made against the proceedings of this body. I will read a copy of the resolution:—"Resolved, that a piece of plate, of the value of 100 guineas, be, with all due respect, presented to our worthy governor, the worshipful Robert Alsop, Esq., one of the aldermen of London, in testimony of our entire approbation of his diligent attendance upon, and faithful and disinterested discharge of, the duties of that high trust during an uninterrupted course of eighteen years, and as a grateful acknowledgment of his affability and impartial conduct towards the several members of this Court who have successively been elected during his government, and of his constant readiness to communicate to them all those necessary lights, which his long experience in, and perfect knowledge of the Society's rights, interests, and affairs, fully qualified him to give, and which have greatly contributed to facilitate the business of the Society here, and to establish and secure a prudent and faithful management of their property in Ireland." Why, my Lords, if that is true,—and there is no reason to doubt its being a true representation of this gentleman's conduct,—I think no one will blame the Society for doing that which is common in all bodies of persons. There is no reason why this should be the only body of persons cut off from the means of rewarding meritorious service; and in that mode which will be a spur for the future, where it is in the shape of that which will be gratifying to those to whom money will not be acceptable, or any thing in the shape of money,—to such persons by whom this will be acceptable,—the expense is not an object worth considering when the object is to secure beneficial and active service.

My Lords, I would refer to the Answer, folio 437, where the defendants say,—“ that such gifts appear to have been occasionally substituted for the gratuities, formerly voted to persons who had advanced the interests of the Society. Say, that the visits of the deputations of the Society to Ireland were essential and highly conducive to the purposes provided for by the charters ; and that the parties making such visits always acted under written instructions from the Society, or from the Common Council of London ; and, on their return, presented to the Society or Common Council, or both, written reports of their proceedings under the instructions ; and that this appears in particular as early as in the year 1613.” Then they say, “ that in like manner, from the first formation of the plantation, visits have as often as occasion required been made to the said plantation in Ireland, by order of the Court of Common Council, or of the Irish Society, and the expenses thereof defrayed out of the general funds received by the Society ; and in particular, that such visits have of late been more frequent, for the reasons detailed in the resolutions of the Society of the 12th of November 1830, which, as your lordships know, were communicated to several of the Companies, and received without objection. They say, that at a meeting of the Society on the 5th of October 1821, when the twelve Companies were represented by one or more of their members being members of the Society, a committee of the Society reported,—“ that having observed the great benefit resulting from the deputation sent from the Society in the years 1814 and 1819 to Ireland, to inspect and report upon the state of the Society’s property, and the best means of its improvement, and the advantage of the tenantry and population, they strongly recommended to the Court, and to the future members of the Society, the propriety of frequent similar deputations to Ireland for the like desirable purposes ; and it was resolved, that this recommendation should be read at the first meeting of newly-appointed members, in every year. And as to the amount of all and every the sum or sums of money expended, for any of the purposes aforesaid, namely, law expenses, fees to members,” and so on, they refer to the accounts, as giving full information.

They then refer to the schedule, and so on ; and they say, at folio 448, “ that a large proportion of the expenses of the Society arise from salaries to officers, who are appointed both to manage the property and also to carry on the general purposes of the Society ; and that, in like manner, the expenses incurred by deputations of the Society who have visited Ireland, are incurred, partly in respect both of the property and general purposes of said Society ; and that it is impossible to distinguish or apportion such payments. Then they refer to that which explains their schedule, their numerous other expenses, to which the rents and profits are liable under the charter, for the purpose of carrying into effect the objects of the plantation (that is to say) the promotion and support of the Protestant religion in the said settlement ; and the advancement of the trade, commerce, and general welfare thereof, and particularly the city and county of Londonderry, and the town of Coleraine. Say, that, from the first creation of the Irish Society, the said Society being composed in part of members of the twelve Companies, has exercised a discretionary power in promoting all such objects as aforesaid ; and that, until the filing of the present bill, neither the power nor the discretion of the Society has been called in question by any of the Companies.” I entreat your lordships’ attention to that assertion in the Answer, —that the filing of the bill was the very first occasion of any of the Companies attempting to call in question that discretion and power of the Society. “ They say, that as regards the support of the Protestant religion, divers churches have been built on the lands occupied in the plantation ; and that the expenses attending the building of such churches have been defrayed, as hereinbefore sufficiently appears, out of the general funds of the Society. They say, that such churches, and the ministers thereof, have from time to time been supported and upheld by the due application of the funds of the Society. They say, that there is now one cathedral church in the city of Londonderry, and twelve churches in the county of Londonderry, and one church in Coleraine, which were built at the expense of the said Society ;”—one cathedral and thirteen churches !—“ and that the Society has always contributed to the repairs of such churches, and of several other churches in the county of

Londonderry ;—and that it appears by the accounts of the said Society, that, in June 1718, timber was supplied by the Society for the repair of Magherafelt church ; and that in October 1729, for building a new steeple in Coleraine ; and that, in March 1771, the Society contributed the sum of 300*l.* towards the repair of Coleraine church ; and, in November 1790, 80*l.* towards the repairs of the parsonage house ; and in January 1792, 100*l.* for rebuilding the church of Ballykelly ; and in June 1802, 200*l.* towards rebuilding the cathedral spire of the city of Londonderry.” They also say, that in consequence of the number of Scotch settlers on the aforesaid plantation, and other persons professing the doctrines of the presbyterian kirk, established in Scotland, it became necessary to erect presbyterian chapels in the city and county of Londonderry and the town of Coleraine, which have been wholly, or in part, built or maintained out of the funds supplied by the Society. They say, that the Society has always thought it proper, from time to time, to assist other Protestant congregations.

They say also, “ That in order to promote the continuance of the Protestant religion, and in compliance with the express terms of the printed regulations of King James, said Society, at a very early period, established schools for the education of children of both sexes in the Protestant religion in the city and county of Londonderry and Coleraine ; and that it appears by the minutes of the proceedings of the Society, that Matthias Springham, in 1617, erected a building for a free school at Londonderry, at his own expense ; which school the Society has ever since maintained. That it appears by the minute and account books of the Society, that on the 22d of September 1692, it was ordered that 20*l.* a year should be allowed to the master of the said school ; that the said free school has, as they believe, continued in a flourishing state from the first establishment thereof ; and that there is now a master and an usher thereof, who receive salaries ; and that it appears by a report made to the Society, by a deputation thereof who visited Ireland in 1825, that 96 boys then attended the said school.” They say, “ That by said minutes of the Society it appears, that on the 5th of April 1705, the Society resolved to build a free school at Coleraine, which defendants believe was soon

afterwards erected, and the expenses defrayed out of the funds of the Society." It appears that, from the mismanagement of the master and the local authorities, this school at Coleraine fell off. The Answer then goes on to state a memorial, of October 1817, of the inhabitants of Coleraine, upon which the Society resolved to build a new school-house, and to retain the entire dominion of the school. I am reading this part of the Answer, not only to show the proposed objects and duties of the Society, but to show a continual course and habit of successful performance of those duties from time to time throughout the whole period, from the institution of the Society, in every reign, down to the present hour. They say, "that the said school-house was accordingly built, and that the Society now pay the yearly sum of 100*l.* to the master and mistress of the said school; and that by a report of the deputation of the Society, which visited Ireland in the year 1832, it appears that there were 100 boys and 109 girls present at the said school when the deputation visited the same." They say, "that the Society has contributed to the support of three other schools in Londonderry, and three schools in Coleraine, besides the free schools; and that they also maintain a school at Ballywogry, which by the report of the deputation of 1832, is stated not to be in a flourishing condition, owing to the interference of a Catholic priest in the neighbourhood thereof." I suppose they mean a Popish priest—not a Catholic. "And said report, however, states that the number of pupils entered on the books of said school was thirty-two, being eighteen girls and fourteen boys, of which number twenty-five usually attended." They say, "that by the minutes of the Society, it further appears, (as the fact is,) that the Society has at various times contributed to the settling of schools in those parts of the plantation which were allotted to the twelve Companies; and in particular that, as lately as in the year 1814, the Society, by a resolution of the 10th day of June, granted a sum of 50*l.* towards establishing a school at Muff, which forms a part of the allotment of the Company of Grocers."

They say, "that from the time of the first settling of the plantation, and the creation of the Society, the Society has endeavoured to promote the welfare of the inhabitants thereof,

and in particular of the towns of Londonderry and Coleraine, by alleviating the distresses of the poorer tenants of the Society, and by contributing liberally to the general charitable institutions of the said town, as appears in particular by the donations,"—which are particularly pointed out and alluded to as having been given. They say, "that by the minutes of the Society, it appears by an entry of the 14th of February 1728, that a great scarcity of provisions occurred in the plantation, and that the Society contributed to the relief of the poor; and by an entry of the 28th of February 1739, that the Society contributed 100*l.* to the relief of the poor of Londonderry and Coleraine;" and in other and later years, other charitable contributions in the restricted sense of the term charity are set forth. Then they say, "that the above are only a few out of the numerous entries of the like nature in the books of the Society." Your lordships will bear in mind that the book of 1822, the printed book, must not be taken as a representation of all that the Society have done—it is no such thing; but it is only a selection of such acts and matters as in the judgment of those who compiled that book were of themselves prominent or useful to be had in remembrance; it being acknowledged on all hands that there is much of a social character, or of a very useful nature, contained in that book. They say, at page 473, "that it appears from the various answers of the Court of Common Council to the complaints on the part of the Crown in the reign of James the First and Charles the First, relative to the state of the settlement, that from the earliest period the funds of the Society have been charged with the protection and defence of the plantation. Say, that even of late years, especially during the threatened rebellion in Ireland, the said Society has contributed largely towards the maintenance of the volunteer corps, and other associations for the defence of the said province of Ulster. They submit, that upon any future emergency of a similar nature, the Society will have to provide for the protection and defence of the settlement." The defendants, however, say, "that in point of fact the city of Londonderry and the neighbourhood thereof, are placed under the protection of the said Society, has been remarkably free from the disturbances which have at various times agitated other

parts of the kingdom of Ireland." It is of some importance when the prayer of this bill asks for a Receiver or Receivers, to inquire how far any Receivers will be found capable of exercising the various duties which this Society has to perform.

Then they say, — " that in compliance with the direct objects of the charter, the Society have from time to time contributed liberally to all public works calculated to advance the general interests of the city and town respectively, and the plantation at large; and in particular, that it appears by the minutes of the Society, that in 1622 they erected the town-house of Derry, and that on the 6th of May 1691, they directed the wood-rangers to supply sixty tons of timber towards rebuilding the market-house, and repairing the gates and public buildings in Derry, at the usual rates; and that on the 4th of December, in the same year, 120 tons of timber, and 40,000 laths, were allowed for building the town-house of Derry; and that on the 6th of February 1717, timber was supplied for rebuilding the market-house at Moneymore. (This town is in the Drapers' proportion.) And that on the 22d of March 1727, said Society ordered 277 tons of timber for the building of Coleraine-bridge; but it appears by the minutes, that the Society afterwards considered it to be better that the said bridge should be built of stone, and proposed a contribution in money instead of timber; and accordingly it appears by the minutes, that on the 14th of July 1730, the Society contributed 500*l.*, and on the 28th of November 1745, 2,050*l.*, towards the building of the said bridge. In January 1734, the Society contributed 200*l.* towards the building of a new market-house at Coleraine, and ordered timber to be supplied; and on the 2d of February 1741, the Society granted 700*l.* and 35 tons of timber for the same purpose; and that on the 31st of May 1739, a bridge was ordered to be made over Ballysally-brook. That they believe that divers other public works have from time to time been effected by means of the funds contributed by the Society, but for their greater certainty as to which, defendants crave leave to refer to the accounts. They say, that as late as in the year 1820, it appears by a minute dated the 12th of March in that



year, at which time the Society consisted of members of the twelve Companies, that a committee of the Society presented a report recommending public improvements in the town of Coleraine, by making sewers, widening streets, repairing the gaol, keeping open the bowling-green, removing the pound, augmenting the glebe of the rectory, building cottages, making a road on the shore of the Bann for a public walk, and removing nuisances. Say that the Society has also been compelled from time to time to assist the corporation of the city of Londonderry with considerable pecuniary aid, in consequence of the heavy debts incurred by the said corporation. They say, that by a minute of the proceedings of the Society, dated the 11th of December 1789, it appears that the Society agreed to let to the corporation of Londonderry the tolls of the ferry, in order to enable them to build a bridge over the river Foyle, or Lough Foyle, on the security of the tolls; that the corporation in 1790 obtained an act of the Irish parliament to enable them to build such bridge." That is, of course, in the Irish acts. " They say, that the said act of parliament (amongst other things) contained a clause whereby it was provided that nothing therein contained should in any manner injure, lessen, or defeat, the right, title, and interest of the Irish Society to the sum of 20*l.* sterling yearly and for ever, payable out of the tolls under the lease or grant made of the ferry or said river of Lough Foyle to the corporation of Londonderry: that a wooden bridge was built under the said act, which in 1814 was carried away by the ice and flood of the river. That another act of parliament was obtained by the corporation of Derry in the year 1814, wherein, after reciting amongst other things the erection and destruction of the wooden bridge, and that the right of providing a passage over said river was vested in the corporation of Derry, but their funds were inadequate for rebuilding or repairing the said bridge, and that the corporation had expended 6000*l.* in the whole in building the said bridge, and erecting such other public works as in the act were mentioned for the purpose of trade and commerce in the said city, which sums of money were then secured by bonds of said corporation, under their corporate seal. And as it would

facilitate the means of discharging the debt, and maintaining and extending said public works, if said corporation were empowered to borrow money on debenture on the security of said tolls of the bridge, and of the rents and profits of the estate of the corporation, provision was then made for that purpose." The corporation of Londonderry were, among other things, directed to set apart 1000*l.* a year for the purpose of supplying a fund for that purpose, until it should amount to 30,000*l.*, and which was then to be applied to the rebuilding the bridge.

The Answer goes on, at page 491,—“ That the corporation of Derry did not, as required by the said act, set apart a sum of 1000*l.* in every year for the purposes therein mentioned, and that the Irish Society caused an information to be filed against the said corporation, in the Court of Chancery, in Ireland, to enforce the provisions of the said act; but that it appears, by the minutes of the Society, and defendants believe that, on the 29th of December 1828, after hearing a deputation of said corporation of Londonderry, which laid the accounts of said corporation before the said Society, and from which accounts it appeared that the corporation was deeply involved in debt, it was resolved by the Society that the information should be dismissed, upon the corporation undertaking to invest a sum of 500*l.* a year, instead of the 1000*l.*; and they say that, in the year 1831, a deputation of that corporation waited upon the Society in London, to request a pecuniary allowance, to enable them to support the magistracy of the city; and that, on the 3d of November 1831, the Society resolved to sustain, for one year, the expense (not exceeding 750*l.*) prayed for by the said corporation for the support of the magistracy, on condition that immediate measures should be adopted within the succeeding year for reducing the tolls on the said bridge to the scale of the year 1800, so as to benefit the whole community trading to Derry, as well as the whole province of Ulster.” They say that what they did was to gain a two-fold object; they gave 750*l.* for the support of the magistracy there, but on the condition that, for the benefit and relief of the public, the tolls on the bridge should be reduced to what they had been before the year 1800. This is one of the grievances which has been so

much complained of; but I do not recollect that your lordships were told that the relief of the town, in respect of the expenses of the magistracy, was accompanied by a reduction of the tolls of the bridge, in consequence of the meeting with the deputation of the corporation of Derry which waited upon the Society in London.—I cannot read any longer with facility.

Lord Commissioner PEPYS.—It is four o'clock, so that we will stop here.

Mr. KNIGHT.—I am very sorry to have been so long, but this Answer must be stated by somebody.

Lord Commissioner PEPYS.—The whole case is in the Answer.

Mr. WIGRAM.—There was an understanding expressed yesterday by your lordships, that you might finish the hearing of this case to-morrow.

Lord Commissioner PEPYS.—I apprehend it will be quite impossible.

Mr. WIGRAM.—Sir William Follett is obliged to attend to-morrow in the Exchequer chamber; but it will be impossible that he should reply to-morrow in this case, considering the counsel yet to be heard. If your lordships will allow him to reply on the first day after, on which your lordships proceed in this case, it will be a convenience to him.

Lord Commissioner PEPYS.—Yes, it is impossible he should be called upon to reply to-morrow. We will take this case the first day we sit again.

[*Adjourned.*]

*Saturday, 9th January, 1836.*

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**Mr. KNIGHT.**—Mr. Lovat, as you are in Court, may I ask whether you are in this case for any of the Companies?

**Mr. LOVAT.**—Yes, I am; for I am for three of them.

**Mr. KNIGHT.**—For which?

**Mr. LOVAT.**—I am for the Skinners' Company.

**Mr. WIGRAM.**—For the Skinners' Company?

**Mr. LOVAT.**—The Vintners' Company, and two of the minor Companies—the Poulterers' and the Fruiterers'. With respect to the Vintners, I am instructed to say that they do not concur in the application. They are perfectly satisfied that a Receiver should not be appointed; they are not willing that the Receiver should be appointed.

**Mr. KNIGHT.**—They wish it not to succeed.

**Mr. LOVAT.**—With respect to the other two Companies, I believe my instructions are precisely the same, but I cannot exactly tell. I did not expect the question to be put me.

**Mr. LLOYD.**—Mr. Duckworth is for the Ironmongers' Company, and he begged me to state to the Court that the Ironmongers stand neuter.

**Mr. LOVAT.**—I am not instructed to support the application on the part of any one of those three Companies.

**Mr. KNIGHT.**—I understand my learned friend to say that the Vintners' Company do not wish the application to succeed.

**Mr. WIGRAM.**—All this is a surprise upon us.

**Mr. KNIGHT.**—The materiality of that is this:—without reference to the Fruiterers or the Poulterers, the Vintners' is one of the Companies associated with the Skinners' Company.

Mr. JACOB.—It is one of the twelve.

Mr. KNIGHT.—You are quite right ; it was the Stationers' I meant ; it was a mistake of mine. I had heard that one or two of the Companies, associated with the Skinners' Company, were to appear to make that statement ; but that is a mistake as to the Vintners' Company, but the observation does apply to Mr. Seaton's clients, the White Bakers, who are one of the *cestui que trusts*.

Mr. SEATON.—The White Bakers' Company are associated, I believe, with the Skinners' Company.

Mr. KNIGHT.—That gives me the full benefit of the remark, which, on a motion of this sort, considering who make it, is very material. Certainly the beneficial rights of the Companies associated with the Skinners' Company are precisely the same as those of the Skinners' Company themselves.

My Lords, I have come to that passage of the first Answer—and, I am happy to say, pretty near its close—in which they have begun to state their proceedings in respect of the magistracy of Londonderry, and I rather think I left off at folio 493. I had just concluded the statement in the Answer with respect to that act of parliament, which had imposed upon the corporation of Londonderry the necessity of laying up 1,000*l.* a-year, with a view to accumulate the sum of 30,000*l.* for a public purpose,—I think a bridge. The Irish Society, in the execution of their public duty of superintendence, had caused an information to be filed against the corporation of Londonderry, because they had not paid up this 1,000*l.* a-year ; but on an investigation of the matter, and finding the inability of the corporation of Londonderry to do that, they had dismissed that bill on an undertaking of the corporation to do what they could do, namely, lay up 500*l.* a year, instead of 1,000*l.*, and to that part of the answer I had arrived when your lordships rose. They “ say, that in the year 1831, a deputation of said corporation waited upon said Society in London, to request a pecuniary allowance to enable them to support the magistracy of Londonderry ; and that on the 3d of November 1831, said Society resolved to sustain for one year the expenses (not exceeding 750*l.*) prayed for by said corporation, for the support

of the magistracy, on condition that immediate measures should be adopted within the succeeding year, for reducing the tolls on said bridge, to the scale of the year 1800; so as to benefit the whole community trading to Derry, as well as the whole province of Ulster." I had called your lordships' attention to the fact, that my learned friends, particularly I think Mr. Lloyd, had complained of this allowance of 750*l.*; but had forgotten at the same time to add, that the Irish Society, by means of that, obtained for the public at large of Ulster, and of Londonderry in particular, a considerable reduction of toll. The defendants say, "That by the report of the deputation of said Society, which visited Ireland in the year 1832, it appears that the said corporation"—it will not do to omit centuries in this way—"it appears that the said corporation of Derry has accordingly diminished said tolls; but inasmuch as the sum of 500*l.* had not been set apart for the years 1831 and 1832, the deputation did not recommend any further sum to be allowed towards the support of the magistracy, as they considered the corporation of Derry to be so involved in embarrassment, that they could not be of any efficient service to the public, till they became emancipated from their debts, and re-incorporated on a better system."—One wonders that in the north of Ireland they should be so fond of that word *emancipated*.—"Say, that besides all the different classes of expenditure hereinbefore referred to, the said Society, in the years 1825 and 1826, incurred heavy expenses in building suitable rooms for the meetings of said Society, and the safe custody of their voluminous records, and other papers and documents; and as to all the expenses aforesaid, except said allowance for the magistracy of Londonderry, the defendants say, that the same were incurred when some member or members of each of the twelve Companies formed part of the Irish Society, and that a member of the Skinners' Company was also a member of the Irish Society when the said sum was voted for the magistracy of Londonderry; and are ready, if the Court should think fit to direct, to set forth a full, true, and particular list of all their muniments of title." But they speak of the enormous and intolerable expense and difficulty of setting forth all their

documents in the manner which is usual, so far as the term usual can apply to a case of this description. Then they say, " that they have heard and believe that said minor Companies of the Coopers and Brown Bakers have some time since given up their right and interest in said ferries, fisheries, and town lands, to the Corporation of the City of London, as hereinbefore is mentioned; and also that the said Haberdashers, Goldsmiths, and Vintners have sold their right and interest in the allotted lands, to the persons already mentioned. They say that they admit some of the present members of said Irish Society are also members of the different Companies; but the defendants do not believe that the Companies, therefore, refuse to concur in the suit of said plaintiffs; and, on the contrary, defendants believe, from the letter of Mr. Kensit hereinbefore set forth, that the twelve principal Companies, or many of them, act in concert in this suit, and that costs have been needlessly incurred, by making them parties defendants to the bill instead of parties co-plaintiffs with said plaintiffs." As regards the declaration, and so on, they " say, that they are, in the first place, trustees for the general public purposes provided for by said charters and proposals, and for the Corporation of the City of London, as interested in the commercial and general prosperity of the plantation or settlement." They say, " that, as regards the account sought by the bill, the plaintiffs have always, by two of their members, themselves formed a competent part of said Irish Society until the month of February 1831; and that one of their members was also a member of said Society until the month of February 1832; and, further, that said Irish Society has always afforded access to the accounts thereof whenever required by any of said Companies of London interested in said Irish estates, as hereinbefore sufficiently appears." And, my lords, having made that statement in the Answer, I should have thought that alone would have been enough; and I submit, that alone would have been enough to make it impossible, according to the remark I made at the outset, for your lordships to hear this discussion for any efficient purpose in the absence of the public, that is, in the absence of the king's attorney-general.

It is sufficient that the issue is raised, to prevent the Court hearing the question dismissed in the absence of those so materially interested. I made the remark before; I only allude to it again because this passage, in the Answer, seemed to call for it. What I stated was relevant to the matter of the record. Your lordships are aware that this has been advisedly, and with deliberation, brought forward by the Skinners' Company in this shape; because one of the first things I took the liberty of stating at the outset of this motion, was, that neither the attorney-general of England nor the attorney-general of Ireland was a party to this bill.

They say, "that as regards the account sought by the bill, the plaintiffs have always, by two of their members themselves, formed a competent part of the Irish Society until the month of February 1831; and that one of their members was also a member of the Society until the month of February 1832; and that the Irish Society has always afforded access to the accounts thereof, whenever required by any of the Companies of London interested in the Irish estates. They say, that the clerk of the Skinners' Company inspected the accounts of said Irish Society for seven years back, in 1824; and they insist that, under the circumstances aforesaid, the plaintiffs must be held to have acquiesced in the said accounts, inasmuch as they have suffered eight years to elapse since their actual inspection, without making any complaint in respect thereof. They submit, that no partition should be made; and that the same should not be divested out of the Irish Society, or vested either in the twelve Companies, or any trustee or trustees for the said Companies, or any of them. They say, that by the bill of the plaintiffs it appears that the Corporation of the City of London, by said charter of King Charles the Second, are enabled to remove any of the members of said Society who shall misbehave himself in the manner in said charters mentioned. They submit, that the jurisdiction of the City of London is in the nature of the vesting jurisdiction. And they say, that the suit of the plaintiffs is imperfect, inasmuch as if they persist in carrying on the same, it is necessary that his Majesty's attorney-general, and also the



Corporation of the City of London, should be made parties to the suit;—and they insist on all matters aforesaid in bar of the suit.”

Now, with this intimation in the first Answer, to the conclusion of which, except the schedule which I pass over, I have now come;—with this intimation upon the first Answer, they do amend, by making the City of London parties, but they do not amend by making the King’s attorney-general a party, although the issue raised, which your lordships are to hear discussed in the absence of the attorney-general, is a question whether the public have not a paramount right and interest in this question. My learned friend has found the charge in the bill as to the other Companies. The charge I allude to in the bill is at folio 349, where the plaintiffs “charge, that the several chief and minor Companies of the City of London have contributed to the expenses of the said plantation in Ulster, who are defendants hereto; and the said Corporation of the City of London, claiming under the said Coopers’ Company, and White Bakers’ Company, make the same claims and demands, in respect of the surplus profits of the ferries, fisheries and town lands, as are made by the plaintiffs upon the Irish Society of London; but some of the members of the said other Companies and of the Corporation of the City of London are also members of the Irish Society, and for that or some other reason, which they refuse to discover, the said chief and minor Companies of the City of London refuse to join with plaintiffs, as plaintiffs, in this suit.” Now that is an allegation by which of course the plaintiffs are conclusively bound.

Now, my Lords, the Answer, to the conclusion of which I have now come, was, I have already stated to your lordships, filed on the 30th of January 1833. Independently of the merits of the case, appearing upon that Answer, your lordships have it, I think, pretty conclusively ascertained, that that Answer was not an answer on which they could successfully move; and they never moved upon it.

Mr. WIGRAM.—It was October 1833.

Mr. KNIGHT.—It is a mistake of January for October: the original Answer was filed on the 30th of January 1833. That

was excepted to; and the further Answer, to which I am coming, was filed in October 1833; but however, as your lordships know, the circumstance that an answer is insufficient affords no reason for not moving upon it—on the contrary, it is a fair observation in support of a motion upon an answer, and has been long since settled, that it does not prevent their excepting to it afterwards.

Mr. TEED.—May I state, that I appear for the Goldsmiths' Company, one of the principal Companies interested in this motion?—they do not desire to disturb the existing state of things.

Mr. KNIGHT.—Do you oppose the motion?

Mr. TEED.—No; I do not oppose the motion; but I am not instructed to support it.

Mr. KNIGHT.—*Qui non est contra nos, pro nobis est.*

Mr. WIGRAM.—It is as well for our purpose, but not for yours.

Mr. KNIGHT.—I only want to know what Mr. Teed means.

Mr. WIGRAM.—He states what he means.

Mr. KNIGHT.—I have a right to ask him what he means.—My Lords, as I was stating, their moving upon that Answer would not have precluded the right to except; and I therefore may assume, that the Answer did not afford the means of moving upon it; and if it did not, we shall see whether that is amended by any subsequent answer.

My Lords, a further Answer was filed in October 1833. That further Answer appears principally to consist of a declaration of inability further to answer certain questions than they had already been answered. At folio 6, they say, “that they believe that the improvement, admitted by the former Answer of defendants to have been carried on by the twelve Companies on their respective portions of land therein mentioned, after the conveyance thereof to them respectively in the said bill in that behalf referred to, were carried on at the expense of the Companies.” That is not very material. “They submit, as they submitted by their former Answer, that the rents and profits of the hereditaments are to be applied, in the first place, for the support and improvement of the plantation in Ulster, and, in particular, for the maintenance of the Protestant

religion there ;" and then they state, that on this subject they are unable to answer any further questions. I think there was no schedule to this Answer ; therefore they had every thing in the way of schedule which they could desire, as to documents and otherwise upon the first Answer, and I take this second Answer to be altogether immaterial ; that it contains nothing. I merely allude to it, for the purpose of showing the character of the exceptions which were taken to the first Answer, as being in their nature frivolous, though technically sustainable. I do not see any schedule to that Answer ; the Answer certainly is nothing.

Mr. WIGRAM.—I do not desire to interrupt you ; but your further Answer verified your accounts, as set forth in the first.

Mr. KNIGHT.—No, it stands thus :—The further Answer of the Society gives us information ; but I am now told it was arranged that the Answer, to be filed on the oath of the governor and the secretary, should verify the accounts upon oath ; and that was done.

Mr. WIGRAM.—If you refer to folio 9, you will see what I mean.

Mr. KNIGHT.—I am obliged to you for the observation ; only that it is enough to show, as far as regards the present case, that nothing arises upon that Answer.

My Lords, the bill was amended. The error Mr. Wigram alludes to, which he says was corrected by this Answer, is at folio 9 :—" That John Thomas Thorp, the Governor, and Henry Schultes, then Secretary of the said Irish Society, defendants in the said bill named, have in the first schedule to their joint and several further Answer to the said bill, set forth accounts of the total receipts and disbursements of the said Society in each year, from 1812 to 1832, both inclusive, and have entered in such receipts the arrears of rent received in each year, which were accidentally omitted in the schedule of receipts for the last eight years, to the former Answer of these defendants annexed ; but the full amount of which arrears is set out in the printed balance sheet, for the same period, referred to by the former Answer." There was a column, or something of that sort, left in blank in the schedule, which had been supplied

by the printed balance sheet; and it was thought worth while to except to that. That is the whole on that subject: so that the Answers to the original bill were complete in October 1833. The bill was amended, as your lordships know, in May 1834; they did not move even upon having what they have admitted to be a full and complete answer to the original bill;—they waited till May 1834, when they amended; and the Answer to the amendments was filed on the 17th of November 1834; and that brings in the matter relating to the election. Your lordships, I think, have not before heard that accurately represented; but in some sort of connexion with this subject of diligence in the prosecution of the suit, your lordships have heard the same argument. The observation may appear trifling,—but I think the observation is not unfair,—that their conduct in the whole of the case shows an admission on their part, that on nothing contained in the former Answer could they move with any chance of success. I think the observation is not unfair, and not immaterial, considering the dates and circumstances. If it be so, or whether it be so or not, let us now consider whether the last Answer, to which I am now come, contains any thing to support the application. The last Answer, in November 1834, states some circumstances in the year 1608, which are not very material; but it was necessary in point of form to answer them.

Lord Commissioner BOSANQUET.—I have no copy of the further Answer.

Mr. KNIGHT.—It is a very short one, I am very happy to say; considering the apparent bulk of this, it is much more slender than might be conceived.

Lord Commissioner BOSANQUET.—If you have not a spare copy, it is not material, I can take a note as it goes on.

Lord Commissioner PEPYS.—I will mark mine.

Mr. KNIGHT.—Your Lordships know that the least alteration of a statement, or a matter which is material, renders it necessary to go over a good deal of the old matter, in point of form; and a part of the original bill being altered, it was necessary for this Answer, to go over the origin of the Society in the early part of the seventeenth century, which, after what you have heard, I should waste your lordships' time if I were

again to go through. My learned friend Mr. Jacob, and I, without any concert, have read the Answer similarly, and have begun to mark it at precisely the same spot, about folio 17. They say—"That the twelve chief, and other corporate Companies within the City of London are, as regards each other, distinct and independent bodies, but that they are not, and never have been, distinct or independent of the Corporation of the City of London; but, on the contrary, have at all times been subject, in various particulars, to the government and control of the Corporation of London, of which, in fact, they form subordinate parts; that the said Companies were originally mercantile or manufacturing guilds or associations, and that before any retail trade or manufacture can be carried on in the City of London, it is necessary that the party carrying on the same should be a freeman of London; that the Court of Aldermen has, from time immemorial, interfered with, and regulated the by laws of the said Companies; and that, in ancient times, the Corporation of London did not unfrequently levy contributions on said Companies, both of monies and of goods, for the general purposes of the City. They do not know that any of the Companies were incompetent to superintend or to give the requisite directions for the progress of said work or plantation; but defendants believe that it was never intended, either by King James, or the Corporation of the City of London, who undertook said work, that said Companies, or any of them, should superintend the same. They believe that, so far as appears by their former Answer, the Corporation of the City of London did interfere to give directions for completing the said plantation. They deny that the Corporation at all interfered with, or directed, as being the party who, on behalf of the said Companies, contracted for the planting or establishing of the said colony or settlement; for defendants believe they so interfered and directed, as being themselves the original undertakers, and, until the formation of the Irish Society, the sole managers of the settlement. They believe that such acts of intervention on the part of the Corporation as in the bill are mentioned, were resolved on, and done in Common Council. They deny that any of the Companies, as such, are represented

in the Court of Common Council; for the defendants say that that Court, that is, the Court of Common Council, is elected by the resident householders of the various wards of the City of London, being freemen of the Corporation of London, whether or not they belong to any Companies; but the defendants say that, until the year 1831, the twelve principal Companies were substantially represented in the formation of the Irish Society, which entirely consisted of members of the twelve Companies; and submit that the twelve Companies are bound by their acts."

Your lordships will allow me here to pause for a moment, that I may call your attention to certain passages in the book, being extracts of the proceedings of the Irish Society, which shew that the members of the Irish Society were made the organs of communication between the Irish Society and their respective Companies. Your lordships will find express traces of that in the proceedings:—my learned friends will call your attention to the passages:—I have marked two or three of them. I am anxious not to overload the case by going into it at too great length, but those passages shew the knowledge the twelve Companies had of what was going on,—that the members of the Society were considered so far identified with the Society, that they were requested to communicate with their respective Companies on the subjects. There is a passage, at folio 22, but I need not call your lordships' attention to that.

Then something else is put in about the formation, and so on, all of which has been read to your lordships. Then, at folio 25, they state "that they believe that a petition was presented by the Corporation of London to King Charles the First, after judgment was given in the information, at the time and to the effect stated in the bill, to which they refer; but that the Irish Society did not concur in, and is not, as they submit, bound by any statement contained in that petition." At folio 28, they deny—"that in the writ of *scire facias* in the bill referred to, as dated the 28th of December in the 13th of Charles the First, it is recited that the Irish Society was found trustees for the City of London, for the use of the

Companies, or to that or the like effect, although it is erroneously so stated in the book ;”—that is, the book of 1822 ; printed, they say, at the time when a majority of the members of the Society belonged to the twelve Companies alleged by the bill to be entitled to the property entrusted to the Society : that circumstance alone amply accounting for many of those allegations as to trusteeship, and so on, which more or less are to be found scattered throughout the papers. My learned friend, Mr. Jacob, has made a note in his copy of the book, at page 57, correcting them—it is the second paragraph in page 57 of the book: the expression is,—“ The *scire facias* stated that the Irish Society was formed as trustees for the City of London for the use of the Companies.” My learned friend, Mr. Jacob, has very properly noted that as incorrect, and refers to the further Answer for the statement on that subject, which will at once account for the term used in the book ; *i. e.* the natural proneness, the natural, but not unfair willingness to give to the Companies, of which those members substantially were the representatives in the Irish Society, the full benefit ; it is consonant to the course of human nature to do so, and I do not complain of it ; but that at once accounts for any inaccurate use of the words “ trustee ” and “ trusteeship,” used throughout these proceedings,—words capable of a construction other than those of mere technical trusteeship, not necessarily confined and limited to that construction, but to whatever construction liable, not being an expression which could control the law or alter the facts.

After noticing that error in the book, and going through other immaterial matters, but which the shape of the amendments rendered it of course incumbent upon the defendants to notice, the next passage I have marked is at folio 36. They “ submit that they have such discretionary power as in their former Answer mentioned, and that what is required to be done by the said charters cannot therefore in strictness be ascertained.” What is required to be done by the charters cannot therefore in strictness be ascertained. They “ deny that in or previous to the year 1676, or at any other time in particular, the plantation in Ulster, which was undertaken by

the articles of the 28th January 1609,"—and so on,—“ was fully completed ; for the defendants say, that although the first planting of the colony was completed before the year 1676, yet it was intended, both by the said articles and the charter, that the said settlement or colony should be for ever upheld and maintained, and the original objects thereof, namely, the maintenance of the Protestant religion in that part of Ireland, and the advantages to be derived from the commercial intercourse between the said settlement and the City of London, should from time to time be carefully kept in view and supported.”

Then they “ deny that at or since the time in the said bill mentioned, or since any other time in particular, or now, all the sums of money which were or are required to be raised for local and public purposes within the city of Londonderry and town of Coleraine respectively, and the respective liberties thereof, or within the other lands of the plantation, were, or have been, or are raised in the manner in the bill mentioned, by local taxation ; for on the contrary, defendants say that the Society has from time to time, up to the present time, since the period in the bill mentioned, contributed timber and divers sums of money for the erecting and maintaining of the Town Hall and other public buildings in the said city and town respectively ; and also divers sums of money for the improvements of the streets of the city and town and liberties thereof respectively ; and of the harbour of Londonderry, and for the maintenance of the magistracy, and otherwise for the good government of the city and town respectively, and for the support of the charities and other public associations of the said city and town respectively.” These things are stated with more particularity and minuteness than had been previously done. They say, that they “ believe that in the year 1676, and for many years subsequent thereto, the current expenses of the Irish Society were necessarily of a small amount, because their income was small ; and not otherwise, because the expenses were reduced to such a small amount.” And they say, “ that many of the books and papers of the Society having been destroyed by fire,”—there was a fire in the Irish Chamber, in 1780, which damaged most of their old records ;—indeed, I have seen



some of them, which look more as if they had come from Herculaneum than Guildhall—"and others mutilated, as in the former Answer of defendants mentioned. They cannot set forth, as to their belief or otherwise, the amount of the current expenses in the year 1676, or for any of the twenty years subsequently. They say, they believe that in many subsequent years the Society did accordingly, and year by year, not always immediately, but at the expiration of very short periods after receipt by them of the rents and profits of the said ferries, fisheries, and town lands, regularly pay and divide to and among the said twelve principal Companies the monies from time to time remaining in the hands of the Society's treasurer, leaving a surplus or balance for meeting the ordinary current expenses of the Society. They say, that in reference to the minute and other books of the Society, it appears, and these defendants believe that such divisions were made in every year from 1676 to 1688, except in the year 1678, when no dividend appears to have been made.

"They say, that from the year 1688 to 1698, they have not been able to discover, and cannot set forth as to their belief or otherwise, whether any dividends were made, except in the year 1695; and they believe, that since the year 1698, some dividends have been made in every year up to the time of filing the original bill." Your lordships recollect the statement made by my learned friend on the other side, that the dividends had been withheld, and the trust, as they called it, disputed; but "the defendants say, that the above information, as to such dividends as aforesaid, is derived from the minute books of the said Society, containing orders that a dividend should be made; but the account thereof does not appear by the minute books, and, save as aforesaid, and save as appears by the former Answers, they cannot set forth as to the dividends, except that defendants believe that the balance was at first small, the public works and improvements and general expenses being gradually augmented as the income, derived from judicious expenditure by the Society of money in such works and improvements, was increased.

"They say, that in every year during the period in the bill

mentioned, up to the year 1831, members of the twelve Companies were also members of, and in fact formed the Irish Society; and that up to the year 1832, one of the Court or governing body of the Skinners' Company was also a member of the Society. They admit that the payments which from time to time since the date of the charter of King Charles the Second, had been made by the Society, being constituted of members of the twelve Companies as aforesaid, to the said twelve Companies, for or in respect of rents and profits, have been made under orders directed by the Society so constituted as aforesaid, to their treasurer, which have been for the most part in the form in the bill mentioned. They say, that the surplus rents and profits of the ferries, fisheries, and town lands, after paying all expenses attendant upon acts necessary or required to be done by the said Society, in pursuance of the said charters or otherwise, cannot be ascertained, inasmuch as the Society is entrusted as a public body by the said charters, with doing all such acts, and incurring all such expenses, as the said Society may in their discretion think proper and consonant to the intention of the charters.

“ They deny that the plaintiffs, or any other Companies, have lately discovered any facts relating to such surplus. They believe, that the said Society, being wholly composed of members of the said twelve Companies, have frequently, in the manner in the bill mentioned, acknowledged and admitted, or stated, that they were, to a certain degree, trustees for the plaintiffs, and for such other Companies as in the bill are mentioned; but defendants do not know or believe that the said Society have ever admitted, and they deny that the said Society are in fact such trustees for the said Companies, or any of them, as in the bill mentioned, inasmuch as the plaintiffs, by their bill, insist that the Society are trustees for the Companies exclusively. Whereas, the defendants submit that, under the circumstances in their former Answers mentioned, the Society are, in fact, in the first instance, trustees for general and public purposes therein referred to, and are only trustees for the Companies of the surplus rents and profits remaining, after providing for such purposes; and that the

said Companies themselves ought to employ such surplus in the manner provided for and contemplated by the charter, and not exclusively for their own interest ;”—and I do hope these public spirited Companies will take into their consideration this little hint which this Society gives them as to the appropriation of their funds. If they are only a hundredth part as public spirited, and only do a hundredth part of the good the Irish Society have done, the public will have occasion to be much indebted to them.

“ They admit, that in or about the year 1715, the Society being constituted of members of the twelve Companies, authorised a case to be prepared for the opinion of the then Attorney-General, and of the Recorder of London, upon a point as to the propriety of the interference of the Society in certain local disputes between the Sheriff and other branches of the corporation of Londonderry and Coleraine, and not otherwise, upon the point in the bill mentioned ;”—of which your lordships have heard, for it is that which forms the sheet-anchor of the case on the other side. “ They deny that by the means in the bill mentioned, or otherwise, it would appear so, that it is the fact that the defendants are the trustees for, or accountable to the plaintiffs and the other Companies in the bill mentioned, or any of them, for the rents and profits in the bill mentioned, or surplus thereof, or any part thereof, otherwise than as hereinbefore and in their said former Answer appears.

“ They admit that the proceedings in the bill mentioned, with respect to the Haberdashers’ Company and the Vintners’ Company, are, amongst many others, but not alone, proceedings upon which the defendants found their claim of jurisdiction over the Companies, and that they were of the nature in the bill stated ; but they say that the Irish Society have, as in the former Answer of the defendants is mentioned, managed the estates vested in the Society, and exercised the right of applying the rents and profits of the ferries, fisheries, and town lands to the public purposes in their former Answer mentioned ; and that such right has never, until the institution of this suit, been questioned ; and the exercise thereof is in itself the exercise of

a jurisdiction over the Companies who are entitled to the surplus rents, after such application thereof as aforesaid." Then they again state, "That in the books, papers, and documents is contained all the information which they are capable of giving; and they submit that they ought not to be put to the trouble and expense of searching through the same."

At folio 57, "they deny that the practice of the Irish Society of contributing at their discretion divers sums of money for such local or charitable purposes in the bill stated, originated in the manner in the bill mentioned, or that there was any other origin thereof, than the power vested in the Society by the charters. They admit, that if there were no funds in the hands of the treasurer of the Society for such purposes, the Society would occasionally apply to the Companies to contribute to the charitable purposes in the bill referred to; and inas-much as such charitable contributions, though desirable, might not be essential to the good government of the colony, the Society would, in any such cases, require a voluntary and not a forced contribution."—Then they are called upon by the bill to answer something about Mr. George Walker; and they say, "They believe that Mr. Walker, in the bill named, did at or about the time therein, in that behalf mentioned, make to the Irish Society such applications for relief as therein mentioned; and that the Society, having then probably distributed their surplus monies to the Companies, but not any otherwise for the reason in the bill mentioned, were unable to afford relief; and that the Companies were, upon the suggestion of the Society, applied to, and required by the Mayor of the City of London to advance 100*l.* a piece for the purpose in the bill mentioned;"—and if ever there was a man who ought to be highly esteemed in a Protestant country, or a country which admired heroic conduct, he was certainly that man. "And that the Society did, at or about the time in the bill mentioned, apply to the complainants and others of the twelve Companies, to contribute and subscribe for the purchasing of corn to be delivered to the poor, within the city of Londonderry, at a low rate;"—so that they go from Mr. Walker to the corn:—that cannot be helped—this scattering of subjects is a necessary incident to the answering an amended

bill, where you have to pick up these little statements here and there. "They say that the Irish Society have, in the first schedule to their answer to the amended bill, set forth a list which they believe to be a full and true list of all such parts of the town lands vested in them, as have been let on leases perpetually renewable, or for a long term of years, on payment to the Irish Society, of lives or premiums, together with the amount. Then they say, at the time when such leases were respectively granted, some one or more members or member of each of the twelve Companies was a member of the Irish Society; and that such members, in fact, formed the Society; but they admit that the said leases were, as they ought to have been, granted, without otherwise requiring any consent of the plaintiffs, or any of the other Companies in the bill mentioned, and in due exercise of the discretionary authority reposed in the Society." I need not again refer your lordships to Sir James Eyre's opinion, to which you have had reference, on the case laid before him in the year 1766; and the opinion he gave with respect to the exercise of their discretion, the which, as soon as the reform of their constitution enabled them, they have exercised.

"They say, that they have not been able to find any counterpart of an actual lease granted by the Irish Society to the corporation of Londonderry, of the ferry and tolls already mentioned; but that the lease is recited in the act of parliament in the former Answer of the defendants set forth, and that the same appears to have been made or agreed to, at or about such time, and is at such rent of 20*l.* as in the bill mentioned, the same being, however, Irish currency. They admit that the rent is considerably less than the annual value to be let of the said ferry. They believe that the lease was granted or sanctioned by the act of parliament, for the purpose in the former answer mentioned. They say the defendants have in the second schedule of their Answer to the amended bill, set forth all the sums they have advanced to, or for the use or benefit of the mayor and commonalty and citizens of Londonderry, and the respective times when such sums were advanced or given; and that the same were not improperly advanced and

given for the support and government of the city of Londonderry, which was, as the defendants believe, incapable of providing for the expense of its government."

Now, my Lords, I come to that upon which the observation as to interference in election matters purports to have been founded. The plaintiffs, despairing of doing any thing upon the case, as made upon the original state of the record, thought they had found something to proceed upon in a matter which touched an election; and therefore they brought that in by way of amendment, and that has been thus answered, having formed no part of the original bill. "They say, that in or about the year 1830, when the Irish Society consisted of members of the twelve Companies"—for your lordships know that only a moiety went out in February 1831, on the new system—that is, at the first sitting Court day after the purification—"an application was made on behalf of persons claiming a right to be admitted freemen of Coleraine to the Society, for assistance against the corporation of Coleraine, which had by degrees become a close self-elected corporation,"—so virtuous a thing as that must have been considered in those days, certainly ought not to have been interfered with; it was a crime to interfere with such a corporation;—"and contrary to law and to the charter granted to the town, had excluded divers persons entitled as inhabitants to be admitted as freemen of the borough from being so admitted, and had usurped the right of electing a burgess to serve in parliament for the borough." That which they had done was the fair consequence, or rather one of the consequences of the unlawful act of so dealing with a corporate right, as unjustly and illegally to exclude from the freedom certain inhabitants entitled to their freedom. It was with reference particularly to this part of the case that I called your lordships' attention to the charter of Coleraine, as giving throughout in the same language as the other charter had given, with reference to the city of Londonderry, a right of controlling their powers. This being complained of by the freemen of Coleraine, on the ground of being excluded from the corporation, they only did that duty which, as public functionaries and Englishmen, they were bound to

do—stepped in to their protection with a view to the parliamentary franchise, not solely with a view to the election of members of parliament, but with reference to other rights belonging to the situation of freemen. But if they had a right to take a part in the election of members of parliament without reference to their other rights as freemen, and if they were improperly excluded from the exercise of this right, whatever it was, it was the duty of the Society, as public functionaries and honest men, to step in to protect them; and that is the statement in this Answer on which my learned friends have moved. They “say, that the persons so entitled caused the defendant, John Thomas Thorp,” he having been the late governor of the Irish Society, “to be nominated as a candidate to represent them in parliament, without his knowledge or concurrence, and without the concurrence of the Society; and that the Society, so constituted as aforesaid, considered it to be their duty to protect the interests of the inhabitants of the borough under the charter; and accordingly, as soon as they were apprised by the inhabitants of the nomination, in order to try the question as to such usurpation as aforesaid, caused a petition to be presented, in the name of their governor, to the Commons’ House of Parliament in the session of 1831, against the return of Sir John Brydges, who was returned by the mayor as the member elected for the borough; and in the prosecution of the petition expended the sum of 683*l.* 2*s.* 2*d.*, but were ultimately compelled to withdraw the petition, in consequence of a difficulty as to proving the application of the freemen to be admitted, to have been made in due manner and form.

Now, my Lords, from the bill of costs relating to that petition, of which this was the amount, it appears that the proceedings with reference to this,—and I am very anxious to draw your lordships’ attention to this,—were mooted, resolved upon, commenced, and proceeded with, as early as October 1830, and the subsequent months previous to February 1831; so that when those who have composed the body since Candlemas 1831, first came in as members of the Society, they found these proceedings set on foot and in actual progress, so

that all the merit or demerit,—I believe it to have been merit, on the Answer it stands so,—the merit or demerit that may be due to their proceedings belongs exclusively to those members of the Irish Society who were members of it when the bill was filed, and who were members of it upon the old system; it being a proceeding, therefore, originating in substance with those who now, for their own purposes, make the complaint. This is only like all the rest of the case. There is nothing distinguishing this feature of the case, bad as they say it is, from the rest; it is alike; it began in October 1830, and went on from that time; so that it was a proceeding actually resolved on, and in full procedure, when the new members came in, in February 1831.

Mr. WIGRAM.—Will you let me see the bill of costs?

Mr. KNIGHT.—Certainly, [*handing it over.*] Parliament met in February 1831: according to the usual course, a petition must be presented against the return very soon after the meeting of parliament; all this therefore, requiring great consideration, must have been settled before-hand. Your lordships probably recollect my calling your attention to the resolutions communicated in October 1830, by the Irish Society, to the various Companies; in answer to which they received a complimentary communication from many of the Companies, but no objection from any one; the communication actually alludes to this act, as a highly proper proceeding. Alderman Thorp, now no more, had been, as is positively sworn, put in nomination without his consent or knowledge, and without the consent or knowledge of the Society. It was done to try the right of excluding freemen, which right could be tried effectually only by a petition questioning the return of Sir John Brydges, who had been returned by the close corporation, illegally constituted, according to the notion the Irish Society entertained; and therefore, in support of the popular and public right, they undertook that course, which was the right course to try the question. They presented a petition to try the right of the excluded freemen, and which was withdrawn only for want of the means of proving, in a correct, formal manner, the application of the freemen to be admitted. The communication of



the 18th of November 1830, to which I have just alluded, alludes to this subject in this way:—"As to establish their conservative jurisdiction over the corporations of Londonderry and Coleraine, the inhabitants of which latter place have earnestly solicited the Society to exert their authority for the restoration of their chartered and corporate rights, this Court have found it necessary to send frequent deputations of their members to Ireland,"—that is the point actually communicated in November 1830." I rather think that parliament met in November in that year.

Mr. JACOB.—Yes, they did meet in November in that year.

Mr. KNIGHT.—My learned friend, Mr. Jacob, is quite right. Under the date of November 15, 1830, there is this allegation: "Attending at the Irish Board and Governors, signed the petition and the proceedings for the commission. Attending at the House of Commons, with the Governor, when the petition was presented by Mr. Spring Rice,"—that is on the 15th of November 1830. Then they have the *naïveté* by this bill to quarrel with all these proceedings, and to throw this upon the Society, as now constituted, as an act of theirs,—for I had forgotten that the parliament met in November 1830. I did not know that the petition had been actually presented while these gentlemen were forming part of the Irish Society—Parliament meeting in November has been so unusual a thing of late years.

The Answer having stated the motives, objects, and circumstances of this proceeding, goes on thus:—"They say, that when the Society was remodelled, at the election which took place in February 1832, and the majority no longer consisted of members of the said twelve Companies, the said Society found themselves compelled to pay the debt so incurred by the said Society, but did not think it right to take any further proceedings in respect of the rights of the freemen, which would entail expense on the Society, because that proceeding had been lost by the supineness of the freemen themselves, in not having applied to have their freedom enrolled; but they say that they furnished Mr. Alderman Copeland, who now sits for that borough, with the information obtained by the Society in the prosecution

of the contest ; and the said Alderman Copeland, at his own expense, became a candidate at the election, which took place for the next Parliament, and having a majority of votes, if the said parties claiming to be admitted as freemen were so entitled to vote, but not otherwise ; also, at his own expense, petitioned against the return of Sir John Beresford, who was returned by the Mayor of Coleraine. Sir John Beresford was returned as Sir John Brydges had been returned, and it was decided by the committee of the House of Commons, to whom such petition was referred, that the said Alderman Copeland was duly elected representative of the borough ; and he has ever since represented the same in Parliament, and has in manner aforesaid established the rights of the parties claiming to be admitted freemen under the charter ;"—so that the Society were right. I do not complain of what these persons have done ; I do not complain of what former members of the Society have done ; I believe they did their duty, without reference to any observation which might be made, without reference to evil report or good report. What they had to see to was the performance of their duty, which required them to protect the rights of the illegally excluded freemen, and they did it. I am not complaining of their act, but of those who for their own purposes complain of their own act, and seek to fasten it on others. The right has been established, and that shows the propriety of that which was done.

Then the Answer goes on :—" Save as aforesaid, the defendants deny that the Society, in the year 1831 or 1832, or at any time, advanced, or paid large, or caused or ordered to be advanced or paid large, or any sum or sums of money, in or about the election of such burgesses or members to serve in Parliament, as in the bill mentioned ; or in promoting the election of members of Parliament for the city of Londonderry or town of Coleraine, or any members for the time being of the Society, or of any other person. They admit that the 683*l.* so derived, was derived from the funds of the Society. Then they admit that they printed the book :—I do not think there is any thing else.

Your lordships are to judge, (considering that the only

materials upon which my learned friends can, for the purpose of the observation as to interference in this election, proceed, are those which I have just read,) whether that which was represented to you is in any manner warranted by the evidence; or whether the statement by counsel was calculated to lay before you the just and accurate state of the case.

My Lords, before I proceed to make the few further observations which remain, I am anxious to call your lordships' attention to a few Acts of Parliament which have passed.

Lord Commissioner PEPYS.—Will you just refer us to the passage in the Answer to these resolutions of November 1830; as I understand your statement, the interference on behalf of the freemen appeared upon those resolutions.

Mr. KNIGHT.—Yes, in the language I have just read.

Lord Commissioner PEPYS.—It would be known to the plaintiffs then, of course, long before the bill was filed?

Mr. JACOB.—The passage is in 411.

Mr. WIGRAM.—I do not apprehend that any thing before parliament would appear in the resolutions.

Mr. KNIGHT.—No, certainly not.

Mr. JACOB.—It is in folio 411. "That in furtherance of this object, and to recover very valuable rights which have been long usurped, particularly the patronage and right of presentation to a considerable number of advowsons, granted to them by their charter, as well to establish their conservative jurisdiction over the corporations of Londonderry and Coleraine, the inhabitants of which latter place have earnestly solicited the Society to exert their authority for the restoration of their chartered and corporate rights, the council have found it necessary to send frequent deputations of their members to Ireland, in order to carry their measures into effect, that,"—and so on. That was the allusion—it was a thing well known at the time.

Mr. KNIGHT.—The date of the presentation of the petition was the 15th of November 1830. The new system came partially into operation not until February 1831. The resolutions of November were communicated in December 1830.

My Lords, I have the King's printers' copies of the Acts of Parliament, which I wish to bring before your lordships. The first is an Act of the 49th Geo. III. cap. 59, which received the royal assent on 12th of May 1809. It is "An Act for vesting a workhouse and premises situate in the city of Londonderry in trustees, to be sold, and for applying the purchase money in building another school-house, and for better regulating the same." It recites that "there is, and has been for a series of years, a school called a free school, in the city and county of Londonderry, which school was erected on a site or plot of ground given by the Irish Society for that purpose; and the said Society, besides the gift of the said site or plot of ground for a school-house, has uniformly paid a sum of 20*l.* per annum as a salary to the teacher or master of the said school out of its own private funds, which sum is totally insufficient to pay to support the establishment in such way as to render it of any significant public utility. And whereas, the Bishop of Derry, and the said Society, and the twelve principal Companies, and the corporation of Londonderry"—your lordships know the great connexion in respect of their allotments which the Companies have in Ireland, as well as their interest in the undivided surplus,—“taking into their consideration the great increase of population, especially in Ulster, and the advantages that must arise from a more extended scale of education than the present establishment is capable of embracing, have come to a determination to provide a fund by voluntary contribution of their own private property, and by such subscriptions as may be voluntarily made by others, and thereout to form a seminary amply sufficient for the purpose of extended education. And whereas the site or plot of ground whereon the present school-house now stands is situate within the walls of the said city, and is very much out of repair; nor is there sufficient space on the said site or plot to build a proper school-house in case the present one was to be pulled down; and whereas the said site or plot of ground, being situate in the said city, is very valuable, it might be greatly beneficial to the establishment if sold, and the trustees were enabled to purchase or erect a complete school-house, with suitable offices

and conveniences, and to purchase proper fixtures and furniture, and also to purchase or rent a piece of ground within the liberties of Londonderry, for the residence and use of the master, assistants, and children: but inasmuch as the same cannot be effected without the authority of Parliament;—Therefore the board of the Irish Society humbly beseech your Majesty,”—they being the only parties who obtained the Act, and “thereupon certain messuages and hereditaments in the city of Londonderry were vested in the Bishop, and in the Dean and Chapter of Derry for the time being, and their respective successors for ever, freed and absolutely discharged of, from, and against all claims, estate, and interest of the said Society,”—that is, the Irish Society,—“their heirs, successors, executors, administrators, and assigns,”—not going on to say, free from any claim of the twelve Companies or any other person, but “freed from any claim on the part of the Irish Society.”

Then, my Lord, at section 8 of this Act, there is a very remarkable clause:—“Be it therefore enacted, that the general land agent for the time being of the said Irish Society, shall be the treasurer to the school, so long as he shall continue to reside in Ireland; and in case of his non-residence therein, then, and as often as and during the time the same shall so happen, it shall and may be lawful to and for the Irish Society and their successors, from time to time, to appoint.” Then, in the saving clause, which is at sec. 13, the saving and exception is not to the twelve Companies, but is only saving to “the said Irish Society, and their respective heirs, executors, administrators, and assigns, all such estate, right, title, interest, claim, and demand whatsoever, of, in, to, or out of the hereditaments hereby vested in trust, to be sold as aforesaid, as they had before the passing of this act.” So that it is only respecting the statement I have already made, that, if the right belongs to the Companies before, there is no continuing right, for they are not named in the saving clause.

My Lords, there is an Act of Parliament passed in the 54th of George the Third, cap. 230, that received the royal assent on the 28th of July 1814, and is for rebuilding or repairing the bridge, and other purposes. It recites particular acts; and among

others, that of the 30th and 40th George the Third ; and then goes on thus, at the top of page 4394 :—"And whereas, pursuant to the said first recited act, a bridge was accordingly built by the said corporation, in the year 1791, and was maintained at a very considerable expense until the month of February last, when the same was carried away by the ice and floods in the said river, whereby the only communication by a bridge across the said river, for a distance of nearly forty miles from the town of Lifford to the sea, had been interrupted and destroyed, to the great inconvenience and injury of the inhabitants of the said city, and of all other persons in that part of the province of Ulster, consisting of a very populous and manufacturing district ; and whereas the right of providing a passage over the said river is vested in the said corporation, but the funds of the said corporation are inadequate for the rebuilding or repairing of the said bridge : and whereas the said corporation of the said city of Londonderry have, from time to time, borrowed large sums of money, amounting in the whole to 60,000*l*."—I read this for the purpose of calling your lordships' attention to the origin and circumstances of that debt, as proved by this Act of Parliament,—“for defraying the expense of building the said bridge, and keeping the same in repair, and of constructing quays, wharfs, and other public works for the purposes of trade and commerce in the said city, which sums are now secured by bonds of the said corporation, under their corporate seal ; and it would facilitate the means of discharging the said debt, and of maintaining and extending the said public works, if the said corporation were empowered to borrow money on debentures, on the security of the tolls.”—They are, then, authorized to borrow money, and certain directions are given as to the repayment, and so on ; and at sec. 7 and 8, in page 4398, your lordships will see the following provision :—The corporation are empowered to regulate the markets and fairs, and make certain by-laws ; and then it is said,—“Provided always, that such by-laws shall not be repugnant to the provisions of this act, nor to the laws of Ireland, and shall be approved and confirmed by the Irish Society, as is by charter required ;”—a recognition, therefore, of their

controlling power and authority by the legislature, so late as July 1819; and in the next sect. (8) relating to the Race-course, there is this recital:—"Whereas there is a certain piece of waste ground, near the said city, called the Race-ground or Race-course: and whereas the said Irish Society are lords of the soil thereof, and it is expedient that provisions should be made for the better keeping and preserving it,"—then the Corporation of Londonderry are appointed trustees of the Race-course,—“and the stand-house there, and for regulating the erection of booths or tents during the race meetings, or times when the races shall be held on the said race-ground or race-course; and that for such purpose it shall be lawful for the said corporation, with the consent and approbation in writing of the Irish Society, to erect and set up, or cause to be erected and set up, such gates, barriers, and fences, as shall be found necessary and expedient for preventing the driving of carriages, or cattle,”—and so on:—"and for making and keeping the place fit for a race-course." I do not think there is any thing more in that act of Parliament with which your lordships need be troubled.

My Lords, an act was passed in the 2d and 3d of the present King. The present bill was filed on the 16th of July 1832. The public act I am now reading received the royal assent on the 4th of July 1832, just twelve days before the bill was filed. Now the material sections in this to be attended to, I shall read to your lordships. It is "An Act to make a more effectual provision for lighting, cleansing, and watching the city of Londonderry, and to amend several acts." Sec. 45 is at page 2543. It relates to officers to be appointed, and their salaries, and the amounts; and a little below the middle of the section it is provided, that "the committee shall once in every year, between the 1st day of November and the 1st day of December, make out a true account of all rates and duties, and other sum or sums received by them in the preceding year, and of all disbursements thereout, and of the application thereof in the payment of salaries, and in other expenses pursuant to this act, with a statement of the balance (if any) then in the hands of the committee, their treasurer, or clerk; and the said account

shall be signed by the said treasurer, and by him delivered to the clerk, to be laid before the auditors to be appointed at the general annual meeting, to be by them examined, and printed by and at the expense of the said Ballast Office Committee; and an abstract thereof shall be published in some one of the newspapers printed within the city of Londonderry, and one copy thereof transmitted to the Mayor of the said city, and one to the Governor of the Irish Society in London." I beg your lordships' pardon; I find there is a similar provision in sec. 17, which is earlier. Certain accounts are directed to be kept, and an abstract of those accounts is directed to be sent to the Irish Society in London, in a similar manner to those directed in the section I have read.

Then, at sec. 47, proceedings are directed to be entered in a book, "and the books to be kept by the clerk of the committee, which shall at every meeting, and at all other times between the hours of ten in the forenoon and three in the afternoon, be open and liable to the inspection of the members of the said committee, or any of them, or of the clerk, or any of the members of the Irish Society." Then, in sec. 96, in the last page of the act it is provided, that nothing in the act contained shall extend to prejudice, diminish, alter or take away any of the rights, privileges, powers, or authorities vested in or enjoyed by the Irish Society, under or by virtue of any charter or charters heretofore granted to them by the Crown, or by any bodies politic or corporate, or person or persons holding by virtue of or under any grant or authority from said Society:—and this is directed to be a public act.

My Lords, I hold in my hand another public act, which passed after this notice of motion was given. The motion is dated in April 1835; this public act, which is part of the law of the country, passed in the 5th and 6th of the present king,—“An Act to amend several acts relating to the bridge and to the city and port of Londonderry.” I think there is nothing before sec. 16 which it is necessary to read. At page 2287 it enacts,—“that the said trustees shall, and they are hereby required yearly and every year to pay and apply the tolls and other monies arising upon or in respect of the



said bridge in manner following; that is to say, in the first place, in paying and discharging the sum of 81*l.* 18*s.* 5*d.*, which annual sum, by the said act of the 2*d* and 3*d* years of the reign of his present majesty, was directed to be paid to the collector of excise of the district of Londonderry, in discharge of the debt due from the said corporation to the public on account of the said bridge. In the second place, in paying and discharging the costs, charges, and expenses of obtaining and passing this act, in discharge of the interest on any sum borrowed under this act, and in paying the annual sum of 18*l.* 19*s.* 2*d.* sterling, being 20*l.* Irish currency, payable to the Irish Society. In the third place, in defraying the expenses,"—and so on, that had arisen. Therefore there was an interest then recognised as existing in the Irish Society in those tolls;—that recognised their claim and dealt with the repairs of the bridge, saving the interest of the Irish Society.

Then, at sec. 20, contained in page 2288, it is enacted, "That the said trustees are hereby required to keep and enter their proceedings and accounts in such and the like manner as the proceedings and accounts of the Ballast Office Committee of the said city are by the said last recited act required to be kept and entered; and that copies duly attested of the income and expenditure of the said trustees, and of the particulars thereof, shall be annually laid before the Lord Lieutenant of Ireland, and also before the grand juries of the counties of Tyrone, Donegal, and Londonderry, at each spring assizes, and transmitted to the Irish Society, and published in some newspaper;"—so that here your lordships see that the Irish Society are found in good company, between the two sovereigns of the country, namely, the lord lieutenant and the newspaper. At sec. 27 there is a provision—"that nothing in this act contained shall extend to prejudice, diminish, alter, or take away, any of the rights, privileges, powers, or authorities, vested in or enjoyed by the Irish Society, under or by virtue of any charter or charters heretofore granted to them by the Crown."

Now, my Lords, it is upon these materials, and in this state

of the law, that upon a bill denying, and founded upon the denial of the right of the Irish Society to expend one shilling in public purposes,—upon a bill denying, and founded upon an exhibition of the denial of any discretion, power, or control existing in this Society,—your lordships are asked to deprive that Society of every shilling of available balance in their hands, and to appoint a Receiver, to prevent their ever receiving any other balance, or having any other balance now in their hands. You are asked, therefore, in every sense and to every purpose, to take from them the means of acting;—they can no longer pay or have an officer,—they can no longer exercise any discretion,—they can no longer interfere with the Corporations,—they can no longer direct the application of any sums for public works or for public charity. They must exercise their functions by means of officers and servants, to be paid, and at a certain annual expense; and the machine must therefore be stopped, if your lordships take away the means of its going on;—and you are asked to do that, as I have already stated, upon this bill; and therefore upon an accession upon the part of the Court to the arguments not of counsel, but of the bill. Have I then rightly stated to your lordships, that to accede to this measure would be a decision of this most important cause? The Court can grant a Receiver, only upon the notion that this Company have that right, and that the other Companies have that right which the bill asserts, of preventing the exercise of that discretion; because the case is not put by the bill, as I read it, upon the alternative of malversation, even if that malversation existed; the allegation of that, well or ill founded, is put as matter of aggravation and accumulation, and as rendering it therefore more important for the Court to interfere; but the right, as set up by the bill, is a right independent of conduct, and a right which, if the case is tried, would exist, whatever had been the conduct of this Society: because, a pure *cestui que* trust has the right to displace his trustee; he has the right to have his property administered by himself; and no one can force a trustee upon him.

My Lords, that therefore is the position to which, by granting the present motion, you must accede; involving in it a decision in the absence of the Attorney-General, and without

hearing the Crown on behalf of the public, which is done where there are any public duties to be performed;—because, your lordships cannot delegate those public duties, if there are any, either to a Master or a Receiver. To decide in favour of the motion, will be to say, that there are no public duties to be performed; for you cannot delegate to any body the performance of them, and you are therefore deciding at once against the public in the absence of the public. Am I then going too far in saying, that this is a cause which ought not to be discussed in the absence of the Attorney-General, whom they have, after deliberate notice, omitted to make a party?

But, my Lords, if this be compared to a simple trust, let us consider what the trust is, and let us consider a little some of the law relating to trusts. My Lords, it does not follow that a person having an interest with others in any property, can therefore in all cases subtract his proportion, at his arbitrary will and pleasure, from the general system of management, and which has been matter of contract. But in a case analogous, by way of converse to this,—the case of an estate subjected to a trust for sale, and to a trust for dividing the proceeds among several individuals, all *sui generis*,—but who can alien that interest? Any one would have a right to elect, to have the land sold, or to prevent the sale; but where there are several persons interested, each has a commanding voice, in effect, for the purpose of pursuing and adhering to the original mode of division prescribed; and in that case, no one can withdraw his lot out of the common fund, for the purpose of preventing the sale, and having it converted into money;—any one may prevent that, as it is a scheme of management and arrangement in which all are interested;—the continued concurrence of all in which is requisite to the carrying it into effect. Now, so far as this case can be likened to a contract, if there is evidence of a contract that all, supposing them to be interested in this property, should be subject to a particular course of arrangement, that this property should remain undivided, and that it should be dealt with in a particular way, the person interested in a hundredth or a thousandth part has an effective veto upon that. It is a contract by all of them, for the benefit of all, that there should be that certain mode of dealing with it

on behalf of the tenants in common, which, if existing, must be recognised by all courts of justice. Now, the uniform course of acting for two centuries has not been often disregarded by courts of justice. In favour of long enjoyment or long usage, any thing would be presumed. Courts have said they would presume an act of parliament. Charters have been presumed. Deeds have been presumed, if necessary, to support a long course of uniform usage. In the present case, I have a continued and unbroken usage in all parties claiming—participated in by them,—participated in by parties claiming, from time to time, the control of this part of the property, confided by the arrangement formerly made to the management of this particular body, properly constituted; and to them is confided the dispositions of the profits, not for selfish purposes, but partly for the public good and for general purposes, and that it has been continually during two centuries acquiesced in. Why, my Lords, would not an usage one-fourth of the time amount to conclusive evidence of a contract? If it were necessary to support the case on that ground, one of my arguments, though by no means the best, is, that the practice and usage, the continued dealing, the uniform course of conduct, are conclusive evidence that such has been the dealing of these parties, from which it is not competent for any one of the parties, whether from temper or selfishness, to retire at pleasure. My Lords, I rely upon that; and I respectfully call upon your lordships,—and I should respectfully do so were I at the hearing of the cause, but I do so with even greater confidence now on an interlocutory application,—not to act contrary to such a course of evidence as is presented to you.

But then it is said,—But, true, there may be such proofs of actual fraud on the part of the trustees, or that which would amount to fraud, or a participation in fraud, in those whose duty it is to prevent it on the part of trustees charged with malversation, that the Court, in such a case, would be bound to interfere. My Lords, is there such a case here? With a diligent and active solicitor, with a perfect knowledge of all the proceedings of this Society, with full and entire access to all books, with the means of obtaining information,

not only from the books of the Society but from the oaths of the governor and secretary, they have had the case most fully investigated;—every act and transaction of this Society is disclosed. The observation may appear trite; but we are in times when it becomes necessary to make the observation—You may pass act of parliament after act of parliament—you may accomplish by acts of parliament; but as no act of parliament can make a man a woman, so no act of parliament can make a man otherwise than a man; and it is hardly to be supposed, that you can look to the course of conduct of any Society for two centuries, and expect to find it without blot or objection. That is a notion which would hardly occur to a mind much above idiotcy. As long as men are men, there will be circumstances of that kind; but if it is found that their only error is that of an injudicious expenditure to a small extent, or an injudicious purchase, or a donation of a piece of land, or an unnecessary dinner, or any thing which a strict course of puritanical management might prevent,—that, I apprehend, is not to be a ground for breaking a course of management which has existed for centuries. That would be a proposition too monstrous to be submitted to your lordships by any reasoning whatever, as I should have supposed, before the Skinners' Company instituted this suit.

My Lords, what have they found out? Nothing which deserves the name of breach of trust — nothing to which the name corruption can apply. Do you find any thing like misappropriation? Nothing of the sort — nothing but pursuing that course which has continually been pursued. Whatever the Society have done in modern days, has been done through treading in the steps of their predecessors. As I have stated, corruption never has been, nor could be imputed; and it is a matter of great doubt, whether any thing like error, or mistake, has been made out in the case. I do not mean to say that there has not been error or mistake — that is incident to human nature; but that there is not an approach to proof, on any allegation, of fraud, upon which alone the Court could interfere to displace a trustee;—there is not any thing which has not been acquiesced in—not for months or for years—but for

ages, by the parties now questioning the proceedings, who have gone back to the year 1683, and about that period, for the purpose of fixing an error on this corporation. Did any one ever hear such an argument? Do your lordships recollect,—or do my learned friends recollect? I certainly do not recollect any such.

I called your lordships' attention, particularly as it was read over, to the mode of electing the Society. No one but the Governor and Recorder can continue in longer than two years; and no one beyond the Governor and Recorder ever has done so; they are therefore continually changed. To visit the sins of the predecessors on their successors, in the way now sought, seems to me much beyond the powers of any tribunal to attempt. Why is the present Society to be affected by the sins of those venerable gentlemen, whose pictures your lordships have been compelled to hear of?—those respectable gentlemen, who, in their flowing wigs and their damask waistcoats, are hung about their chambers, and which I have offered to the Companies, if they will choose to have them? We might as well impeach the right reverend prelates of London and Winchester for the sins of Gardiner and of Bonner—it would be just as reasonable: the argument would have just as much ground and force, if it were said that your lordships are unfit to hold the high offices that you now fill, because you are the successors of Jefferys; the argument would be just as tenable, just as applicable;—and if that will not hold in one case, it will not hold in the other. To say that a corporation, made so by charter, are to cease to be trustees, because there has been at a former period some error or sin, by some former corporators, is quite new in the history of the Court—quite novel on the part of those who have instituted this suit.

My Lords, considering, therefore, the mode of election of the members of this Society, and all the circumstances belonging to it, and alluding to the course of dealing to which I have alluded, it is quite impossible, as it appears to me, for any person to resort to this Court for relief in such a case, but on public grounds; and in that view the question is still more important. Observations have been addressed to the Court

upon this as a matter of private right, and on that ground it would be altogether untenable; but when you consider the great and important objects which former sovereigns of this country had in the formation of the Society; when you consider the language of the charter of King James, and of the charter of King Charles,—is it possible to doubt that the public objects and purposes of this Society are of the permanent and enduring character contended for, for which the charter vested in the Irish Society for ever the power of controlling the by-laws, and the acts of the corporations of Londonderry and Coleraine? Has not that power been recognised as a right by later acts, in the reign of George the Third, the acts to which I have referred? Have not they, the Irish Society, for a period of more than two centuries, been—not perhaps assuming to themselves, but effectually acting on the assumption of public duties, and the right to apply their funds to public purposes and charitable objects, for the public good, in the north of Ireland? Can your lordships say they ought to be prevented continuing to do so? Is it possible you can decide such a question, on the evidence you have now before you; even if the absence of the king's Attorney-General, as representing the public, were not material?

My Lords, I do not call your lordships' attention to the book particularly, but it is hardly possible to take up a page of that book in which you will not find some accounts of a public nature, or some recognition of their public duties, recorded and noted, almost *de anno in annum*. In all the reigns subsequent to the Commonwealth, as well as before, you will find this power of jurisdiction continually exercised, and, as the Answer asserts, never questioned; they have exercised it in the face of the public, and have exercised it most beneficially for the north of Ireland. They have expended large sums in bridges and roads,—but I should mention first, churches, school-houses, and other charitable objects and purposes in the north of Ireland; and it is highly creditable to this Society to say, that to their expenditure and exertions is to be attributed the superiority in point of peaceableness and general condition by which that part of Ireland stands so much distinguished from the condition

in which any other part of that unhappy country exists. If these powers have ceased, when did they cease? That practically they have ceased nobody can allege, for the whole case teems with evidence to the contrary; that by law they have ceased, who has a right to say?—all usage and practice, all contemporaneous as well as subsequent construction, have been to the contrary;—and here then, again, I apply the law of presumption, from acquiescence in long usage, to this point—the devotion of these funds to the public service—and I say, if the charter had not said so, there is ten times more than enough to amount to evidence of a binding contract on the part of these twelve Companies, amongst themselves, with the Society and with the public, that if the charter did not do that, they among themselves would be bound to devote their property, if it was their property, to these public purposes. What! shall it be said, that the possession of an estate by an individual for twenty years carries such a title as not only to extinguish all remedy, but, in the language of a late act of Parliament, to extinguish all right or property of those who had enjoyed it? And shall it be said, where the public at large have openly enjoyed the benefit of property for two centuries, as it has been administered by the Irish Society on the part of the public,—which would be five times over more than is required under the statute to which I refer to extinguish a private right,—still the private right shall prevail over the public? I have always considered that the public right was favoured in cases of this description; that even in a case of a lane or a path thrown open, the benefit of which the public had been allowed to participate in, unless the owner had clear evidence that he meant to preserve the control over it,—that the presumption has been in favour of the public; but the absurd object of the present bill is to withdraw from the public that which the public have for more than two centuries enjoyed, in the shape of discretionary exercise of that power which they have possessed and exercised with the knowledge and consent of those who, for their own purposes, now contest it.

My Lords, for this purpose, if it were necessary, I would refer to that particular passage of the charter to which I have before called your attention. I will occupy but a few moments



of time ; but I am anxious again, before I sit down, to draw your attention to the language of that clause of the charter which applies to the disposition of the rents. In page 25 of the copy of the charter of Londonderry :—" And also to send orders and directions from this kingdom of England into the said realm of Ireland, by letters or otherwise, for the ordering, directing, and disposing of all, and all manner of matters and things whatsoever of or concerning the same plantation, or the disposition or government thereof. And, also, for the receipt, ordering, disposing, and laying out of all sums of money now collected and received, or hereafter to be collected and received ; and, generally, any other cause, matter, or thing whatsoever, concerning the direction or ordering of the said plantation, or concerning any other things whatsoever, which by the true intent of these our letters patent can or ought to be done by them for the better government and rule of the said city of Londonderry and county of Londonderry."

My Lords, as I am very properly reminded, when the charter of King Charles was granted, the contributions and subscriptions had ceased for forty years ; for it is sworn that the last of those was in 1622, whereas the charter of King Charles was in 1662, and the sums to be collected and received could apply only to the rents and profits of the estates : but, my Lords, I do not want that—the charter is conclusive, the practice and usage confirm the right—the practice and usage confirm the title, and extinguish all possibility of claim to the contrary, and say that by the law of the land, independently of the charters, there is an established right in the Irish Society to continue to administer these funds in the way in which they have been administered formerly ; and considering it as a public and elected body, it would be impossible to displace them on the ground of any antecedent mistake on the part of their predecessors.

I need not remind your lordships again, that if the Irish Society have crippled their means of acting by devoting certain portions of their estates in the allotments to the twelve Companies, being, as they were entitled, to alien in mortmain, if they should be willing so to do ; it is so much the more

imperative upon them to apply to the exigencies of the public service those limited means which remain; and, certainly, if I was called upon as counsel to give an opinion upon this case, with reference to their future conduct, I should very much doubt whether, under all the circumstances of the case, the discretion of the Irish Society would be wisely and properly exercised for the future in devoting less than the whole to those public services and objects. With that, however, the present case has nothing to do; the Irish Society have hitherto trodden in the footsteps of their predecessors; they have from time to time made dividends,—in what manner that is to be dealt with in future, we do not now know, nor is it material to the present inquiry. I have just alluded to the fact, that the license to alien in mortmain was to be as far as the Society should be willing;—and it is remarkable that there is no trace whatever of any practice for the benefit of any members of these Companies. It is a very remarkable circumstance that the members of the Society appear to have felt, on the footing, no doubt, that the members of these Companies had been compulsorily taxed for the purpose of contributing to this undertaking, therefore the members of the Companies should be reimbursed from these funds. That was a very singular notion: if there had been a trust, it would have gone to individual members of the Companies, and not to the Companies themselves;—and I entreat your lordships' attention to that—there is not by operation of law any express trust, and therefore there is no trust but that which is to be collected from the conduct, and evidenced by the conduct.

Now then, my Lords, look at that conduct,—look at that evidence of conduct,—and from the beginning of the case to the end you will find no evidence first which is not simultaneously evidence of superintendence and control. Take away the evidence of superintendence and control,—take away the modification of the trust,—take away the discretionary power as far as the evidence of these things is concerned,—and with it you have annihilated their evidence of trust. It is no longer expressed,—it exists only in the evidence of conduct; it is evidence of conduct from the beginning, in every instance, and throughout

it is simultaneously, as I have already said, evidence of the trust, being of a particular, limited, and discretionary nature, subject to superintendence and control. Whereas the argument on the other side is, that the Court is to separate the effect of the evidence, to take it as evidence of the trust, but to reject the same acts as evidence of the superintendence and control, which the same acts show.

My Lords, I am happy to say I have come to the end of those observations with which I think it necessary to trouble your lordships. The application appears to me so very irregular,—I am bound to distrust my own feelings and judgment, and I am bound to suppose there must be something more rational, something more founded than I have been able to perceive. By acute argument, any thing may be made to appear rational; but upon the facts and circumstances of this case, as they appear, the claims of the plaintiffs appear to me to be unfounded. I have felt myself bound to distrust my own judgment; and therefore, not from the dictates of my own judgment, but distrusting my own judgment, as well as with proper deference to the public interests, concerned in the present investigation to a great extent, as well as the characters of those concerned, I have gone into the subject at a length which the mere question of the success of the application would not have warranted or called for. I trust your lordships will show your sense of this application, that if in the result, after hearing all which can be urged, you shall think it half as wrong as it appears to me, you will express your sense of this long-winded speculation on the part of this Company, to try whether it would be worth while to carry this to a hearing, by inflicting upon them, and I believe most deservedly, the costs of these proceedings, as fully as by the rules of the Court they can be given.

Mr. JACOB.—My Lords, in this case I appear with my learned friend, Mr. Knight, on behalf of the Irish Society. He has most fully and correctly stated the facts of this case, therefore it is unnecessary for me to enter at any length into the case, or on the ground of the application made to your lordships. The application for a Receiver, and for the payment of

the money, is in effect an application for a termination of the whole functions of this Society,—it is a means by which the ultimate extinction of the Society is proposed to be effected even before the hearing of this cause. It is so, because this application, like every other interlocutory application, can only be made with a view to the ultimate relief expected to be obtained at the hearing of the cause; and no Court interferes on an interlocutory application, unless it is able clearly to see that it will be bound to give relief when the cause comes on to a hearing; and it is only with a view to that ultimate relief that the interlocutory order can be professedly accounted for. I say professedly, since there is no doubt that this is an application in reality brought forward for the purpose of getting the decision of the Court on the motion, and for the purpose originally intended, getting that decision in the absence of many other parties materially interested in the case; and for the purpose of getting the decision on the effect of the statement made to the Court, but which turns out to be erroneous, that all other parties, though not consenting parties, were desirous that the application should be made.

My Lords, the application now made to the Court must proceed on the notion that some ultimate relief is to be given on the hearing, to which it will be a proper accompaniment that there should be the species of order now asked, which is in effect a virtual extinction of the Society. The bill proposes, first, that there shall be a declaration of the rights. Now, then, the question arises,—the real question in the cause,—of what nature that declaration of right is to be. It proposes next, that there shall be a partition of the property now vested in the Irish Society, the bill including in that proposed partition the power and jurisdiction the Corporation exercises over the corporations of Coleraine and Londonderry, in appointing to the office of the vice-admiral, and in any other public powers which are to be exercised. We do not know in what manner they can propose, or ask the Court, that a partition should be made among persons whose claims exist only under the charter of the Crown, of land held under that charter, which the Crown itself recites to be lands not properly divisible, but to be held in the hands of the Society.

It is then asked, my Lords, if the Court shall be of opinion that these parties, who represent themselves to be simple tenants in common, and among whom it is a matter of course that there should be a partition;—if their argument is right, it is their common, plain, simple right to have a partition; but they seem to be aware that they are not quite so here, and therefore they ask, in case the Court shall be of a different opinion, and that they are not entitled to have that which is common to every tenant in common,—that there shall be a trusteeship in the property, and it shall be vested in other trustees appointed by the Court, and an account taken of the receipts. That is the species of relief which is asked. It is a species of relief with respect to which the Court must see its way before it can interfere in this interlocutory course;—it must see that the Court has the power, and that it is a case which is clear and indisputable; that when this cause comes on to be heard, that species of relief will be clear, and that it is proper, in reference to the case, that this species of relief should be given. This species of relief is one, on the face of it, of a most extraordinary character: it amounts to a charge of trusteeship, now vested in the Corporation, for which we appear. I do not deny that there may have been—and I believe there have been—some instances, but they are very rare, in which a corporation, having been made by an individual a trustee of a trust created by the individual subsequent to the creation of a corporation, that corporation has, under some circumstances, been removed from that trust. There are, no doubt, cases of corporations created for one purpose to whom property has subsequently been bequeathed by will, or assigned by deed, for certain trusts: even in that case this Court has not been in the habit, under the circumstances of the most fraudulent abuse, of removing those corporations from the trusteeship where it has been found that the corporation has abused its trust, by abstracting and diverting to its own purposes the whole of the funds, and by totally neglecting the duties imposed upon them, and applying the whole to their own use. There is scarcely an instance to be found in the records of this Court where a corporation has been removed

from a private trust, conferred upon it subsequent to its creation. One or two instances of this kind are to be found; but cases after cases have occurred of informations in this Court, where corporations, entrusted with objects in respect of charters, have been found guilty of most enormous breaches of trust, and where it was held that they were still to continue,—and that on the ground, I apprehend, that a corporation was a fluctuating body; and that it was not true, because they had been guilty of breaches of trust,—because a certain set of individuals were unfit to be interested, that the corporation, *quasi* corporation, was an unfit body;—that it does not appear that, on the next election of members of the corporation, persons might not come in who might properly perform the trust. This does not at all resemble the case of an individual, who might be removed if he was guilty of a breach of trust,—for the Court does not consider it likely that he will change; but if it is a case of a corporation, they do not remove a corporation, expecting that that corporation will obey the order of Court. But whatever may be said of a corporation having a trust conferred upon it by private individuals, subsequent to the creation of that corporation, when the trust it has is a private trust annexed to its original chartered powers, there have occurred cases of removing a corporation from a trust where that corporation has been created by the power of the Crown, solely and simply for the purpose of holding that property improperly sought to be removed, and for the performance of those trusts from which it is so removed. Has there ever occurred an instance where the Crown has by its charter created a corporation for the performance of a certain duty, where this Court or any other has removed that corporation from the trust, for the performance of which it had been specifically appointed and created? There is no doubt a corporation here has been formed by the act of the Crown for the purposes expressed here,—“For the better order, direction, and government of all, and all manner of things, for or concerning the city and citizens of Londonderry, and the plantations to be made in the said city and county of Londonderry, and all other businesses

pertaining to the same, the charter directs that there should thenceforth for ever be twenty-six honest and discreet citizens of the City of London, to be chosen in form following, who should be called the Society of the Governors and Assistants of London, of the new plantation in Ulster, in the kingdom of Ireland." That is in page 21 of the charter. It is formed by the Crown for those purposes; and the same act which forms it entrusts to it the administration of certain property. Now, no doubt there are forms and ways in which that Corporation can be compelled to perform the duties belonging to them. There are modes in which some classes of duties will be performed under the direction of the common law courts, and others of this Court;—there are circumstances in which, for a very great degree of neglect, the charter would be forfeited,—the charter might be repealed for general neglect. There are modes in which individual members, guilty of misfeasance, might be visited by having resort, in some cases, to proceedings in courts of common law; and they might be visited, in other cases, as individual members of corporations, concurring in that misfeasance, and those breaches of trust; they might be visited in this Court by proceeding against them, establishing a personal liability. There are, in this particular case, as we know, modes provided by the charter itself of correcting misbehaviour on the part of the members of this Corporation; not only the annual retirement of one moiety of the body, but there is a power vested in the Mayor of London. It is not the Common Council without the Mayor, but the Mayor and Common Council are to have the power, as we know that they have, of displacing all or any member of this Society, in case they should be guilty of any breach of duty.

My Lords, I apprehend that it would require some violation to support the prayer of this bill, supposing every thing alleged in it were true. Even if there had been malversation infinitely beyond every thing that is stated on the face of this bill, it would have been difficult even then to have found a precedent for this particular mode that is here prayed for, of administering justice in the case of a corporation, constituted, as this is, by charter of the Crown, for the express purpose of

having vested in it this property, and of exercising this power:—it would be in effect a repeal of that charter, and a divestment of them of that power which has been given to them by the Crown; and if such a power exists in the Court, it will lead to most important questions, that will no doubt in a short time come before this Court;—because there are other corporations of the very same character as this Corporation, constituted by this charter. There are now numerous corporations, constituted in almost every town in the kingdom; and under the new act, all these corporate bodies, existing, with some alteration in their name, are converted from the original object, and they are converted into mere trustees,—plain direct trustees,—trustees limited within a narrow line of duty, namely, as to the application of property that is now vested in them,—limited strictly to the application of that property to certain specific purposes, without discretion, without power, except the power of fixing the mode in which that shall be applied, and the salaries of those officers and others; but without discretion as to the nature of the application, except in the event, which is a very improbable event, of there being in any case a surplus, arising from the property of the corporation, after defraying all the charges of police, and otherwise discharging all the duties imposed upon the corporations. Those bodies are bodies only chosen one half in one year, and one half in the next, just like this, except that they have a little more of the character of permanence about them than they had, because they have altered the election for a period of six or three years: whereas here, nobody is elected for more than two years, except the Governor and the Recorder. Now I say, therefore, that we shall have this same kind of case with respect to these new kind of corporations, in case it shall happen that there are persons in those bodies that do not happen to approve of the mode in which the new corporations deal with the property. In case they shall file a bill in this Court, and supposing that they should happen to prove that the new corporation has been improperly administering their trusts, they will raise the question that is here raised—not whether the defaulting persons are to be removed—not whether the defaulting persons are to be



made individually liable—not whether there is to be an application for a *mandamus*, or a new election of the members; but to raise the question, whether the corporation itself is to be removed from the trusts—whether the Court is to say, that that corporation is to be removed, and that the estates are to be diverted from them, and to be conveyed to some one else; for if you can take from them this property, and these powers, that have been placed in their hands by royal charter, and place that property and these powers in the hands of any body else, is there any reason why there should not be the same mode of dealing, with respect to a corporation existing under act of parliament? I believe none;—it will be previously the same in point of law, and the same question may arise; and if this notion of law were to go abroad, such a question would very probably, from the feeling of hostility that exists in different corporate bodies, be brought before this Court on the part of discontented persons in these very bodies.

I apprehend, therefore, my Lords, that the object of this suit is one that is very much beyond the ordinary practice of the Court; and I believe something beyond any thing which my learned friends would find either precedent or principle to support. They will find, that there may be cases of this description, where, under trusts of this description, partly of a public and partly of a private nature, there may be matter for parliamentary regulation or for legislative interference; but that there is not brought forward a case on which this Court, not sitting to reform the acts of the Crown, can deal with the charters of the Crown, otherwise than by executing them. The Court will not find an instance of the species of relief, that is here prayed for, being granted.

My Lords, that is not however the only ground that would be one of the first that meets my learned friend; but there are abundant other grounds upon which this motion is resisted. The application being one of the nature that I have stated, it must of course depend upon what is the nature of the trust under which the body for which I appear holds the property in question; and secondly, when the Court has arrived at the view of what that trust is, whether there has been such a

violation of it as to call upon the Court for this or any other kind of interference.

With respect to the nature of the trust upon which we hold this property, there is a dispute, and a material dispute,—a question of importance which they have thought fit to bring before this Court, which they have thought fit to raise after the acquiescence of two centuries ;—a question which, in some stage or other, and in some suit, and between some parties, but certainly not between the parties in this record, the Court must decide. That question is not, whether the Irish Society are trustees or are not, for they never claimed one single portion of personal interest in the property under their charge—they state themselves, and they have always so done, as trustees. The question has only been—What is the character of that trust? Now that question was not laid before your lordships in the opening of the case. I do not blame some of my learned friends for not laying it before your lordships ; for one of my learned friends, who opened the case, told us that he was not able to understand that which he calls the new claim of the defendants, the Irish Society. But, my Lords, that question, as contained in the statement of the trusts, as given by the Irish Society themselves in their Answer, is contrasted with the statement as given by the plaintiffs in the bill. My Lords, the Irish Society say in the end of their Answer, in folio 506, “ that as regards the declaration of right sought to be obtained by the said bill, the defendants have not, and they believe the Corporation of the City of London have not, at any time contested the rights of the said Companies, parties to the said bill, to the surplus rents and profits of the hereditaments vested in the said Society, subject to the charges to which the same are expressly subject by the charter of King James the First and King Charles the Second, and to the discretionary power vested in the defendants for the due execution of the charitable and public purposes provided for by the said charters, and the original articles and proposals on which the said charters are founded ; but they deny, save as regards such surplus only, that they are trustees for the Companies, or any of them : they say, that they are in the first place trustees for

the general public purposes provided for by the said charter and proposals, for the Corporation of the City of London, and interested in the commercial and general prosperity of the said plantation or settlement." My Lords, that statement was one sufficiently clear, I should have thought, not to be misunderstood, and which I think my learned friend in reply will show that he is able to understand, by an ingenious argument which he will raise upon it; that statement so made in the Answer is the statement that we give of our view of the trust. That is met by the counter-statement of the nature of the trust which is given in the bill in this case, and which has been already read to the Court, and which amounts to this;—it is in folio 315 of the bill:—they charge, "that the Society are not entitled to exercise any discretion with respect to the application of, or to apply the rents and profits of, the said ferries, fisheries, and town lands, or of any of such rents and profits, in or towards any local, public, or charitable purposes within or connected with the said county of Londonderry or elsewhere." That is the allegation of the question of right that is here at issue between these parties; and upon this record is there, or is there not, any discretionary power? Is there any power—is there any right in the Irish Society to apply the whole, or any part of those funds to any local, any public, or any charitable purposes, either in Londonderry or elsewhere? The plaintiffs assert that there is not,—the defendants assert that there is; and it is upon that question, with respect to the nature of the trust, that this record is now before the Court; and it is that question which the Court will have to decide, whenever this cause comes on to a hearing.

My Lords, as I am now observing upon the nature of that question, I cannot but see, with the utmost surprise, that this suit, conducted by those who are acquainted with the practice of the Court, should have come to the state in which it is now, with such a determination to act in a manner contrary to that which every one knows to be the regular and settled practice of the Court, as to suppose it possible that the question of the existence of trusts for charitable and public purposes, is to be treated as a question simply of private right, as they treat

it; in which the interests of the public, and the person who alone has the right of representing the public, are to be purposely excluded. The utter absurdity, for it amounts to nothing more, is evident, of saying, (after the question is raised, and after they are told by our Answer that we submit, that if they choose to persist in that suit, the Attorney-General ought to be a party to it,) they treat it as a trustee matter, as a question of private right; and because they treat it so, they say not only that the Court shall decide it to be so, but shall do so without calling before it the only person who has the proper right of maintaining that question. But, my Lords, this question assumes an appearance of considerable importance—the property in question is of considerable amount. Your lordships have heard that it amounts in money to, I think, nine or ten thousand a year.

Mr. WIGRAM.—Ten thousand—sometimes much more.

Mr. JACOB.—It fluctuates; in one year it was 12,000*l.*, and in some years it has been 8,000*l.*; it fluctuates between these two sums. This property, therefore, my Lords, is of considerable amount; and what is the nature of the question that your lordships have to decide? I do not mean the question that is placed before your lordships by the argument of my learned friend, who opened the point very differently from what it is, and who informed your lordships that if, as he was pleased to say, the Society had done any thing for the benefit and improvement of that part of Ireland, they were not disposed to quarrel with it. It was very well to throw out that observation,—let them in argument say what they will,—but it is impossible for them by any means to succeed in disguising the real nature of the suit. The real nature of the question that they moot is, whether these funds are applicable exclusively to the private purposes of these Companies, or whether these funds are applicable primarily to charitable and public purposes, for the improvement of that portion of the north of Ireland; and that, I say, is a question of some degree of importance, brought forward at an odd period;—a question whether property belonging to corporations is or is not most properly applicable to purposes of a public character, or to

those purposes to which the property of these Companies is ordinarily applied. And, my Lords, this question comes before the Court in rather a singular way, because your lordships will observe the singular way in which the parties that are before you are marshalled. You have on the one side the Mayor and Corporation of London appearing by their counsel, and the Irish Society also, who are an emanation from the delegates of that body, the Common Council; and this Common Council also, from whom this Society emanates, is the body annually elected as the representatives of the inhabitants or freemen of London. On the other hand, whom have you? You have the Skinners' Company; their precise corporate title I do not remember, it is here only "the master and wardens of the guild and fraternity of Skinners." Now you have also certain other of those City Companies, or of those rather who administer the affairs of those City Companies, who are here supporting this application. From what has passed, I do not know what is the number of the names of those who do support, and of those who do not. Your lordships are to distinguish between those who support, and those who object, among those who appear. We have some of all classes. But it would seem singular that it should so happen that the members of the City of London should be thus strangely divided amongst themselves,—that you have those who are, or ought to be, the representatives of the very same persons who are represented by the Common Council, grouped in one way by Companies and in the other way by wards,—for the Common Council being elected in wards, it leads to their assuming one side of the question—those who are in Companies, being represented by Companies, leads to a different result. Your lordships are pretty well aware of the way in which these Companies are constituted; of course they are very different bodies from what they were when their original charters were granted to them, when they all regulated and were the representatives of the particular branches of trade whose names they bear, and then they were no doubt very useful in the regulation of those trades. All that has now however ceased, and they are bodies of an entirely different description. This body is one of rather an anomalous

and singular character : those bodies are, I think, of a character equally novel and singular, and there is this peculiarity about them,—that their affairs are always managed, not by the Skinners at large, or the body of Merchant Tailors, who form a large and numerous class of persons, including among them, as members of those bodies, almost all the citizens of London, and who constitute the Common Council of London : but the truth is, that these bodies are managed in a very different manner. It is not that we are meeting here with the Skinners' Company, or the Merchant Tailors' or the Fishmongers' Company, but we are meeting with thirty or forty gentlemen, very respectable no doubt, who form the court of assistants of those Companies ; the court of assistants having, I presume, rightly the sole and exclusive administration of those Companies, the sole and exclusive right to use the common seal of those Companies, to put any answer that they might think fit to any bills,—having the exclusive right of administering the funds of those Companies, and having, therefore, the exclusive right of expending those funds in any suit or in any mode in which the select body of gentlemen may think fit to expend it. And your lordships are also aware that, with respect to those gentlemen, they are not in any sense or in any way the representatives of the Skinners, or the representatives of the Fishmongers ; only those gentlemen are not, like the parties for whom we appear, annually elected, but they are that description of bodies usually called self-elected ;—not self-elected in the sense of any man voting for himself, but self-elected in this sense,—that when any vacancy occurs, those who remain fill up the vacancy, and they elect very proper persons for the important duties which now remain to be performed by those Companies : the nature of those powers and duties we know ;—but this is the mode in which they exist.

Your Lordships are aware, with respect to the situation of the Companies at present, that it has been recently decided between one of those Companies, the Merchant Tailors' Company, and one of the individual members of that Company,—they having thought fit to try the question, whether one of their

members, any individual member, had not a right, and was not allowed, to look at the accounts, books, and documents of the Company—it is the case of the Merchant Tailors' Company *v.* Franks. Those questions have been, among the parties in the City, a good deal considered. It cannot be doubted that the mode of election, however much it may have redounded with filling these Courts with very excellent persons, must have created a certain degree of dissatisfaction among themselves; though they do not tax the members by the bill, as seemed to be the plan some hundred years ago, yet they have the arrangement of the Company; and the individual members have not any voice in the regulation, and they have not the right of looking into the books and documents relating to it—that consideration accounts for the singular mode in which you see here the citizens of London apparently marshalled against each other. It is not, however, any large body who are marshalled against those who are represented by the Common Council of the City of London, but it is a small number of self-elected bodies, who happen to have the custody and the power to put the seal of those Companies to any matter that they may think fit to put it to, that are here before your lordships on this occasion.

I make this observation, because your lordships will take it in connexion with that which undoubtedly forms the real cause of this suit. Your lordships will recollect the date at which this suit commenced. Your lordships will recollect that this suit was instituted in the month of July 1832, when it had happened that the City of London had thought fit not to elect into this body of the Irish Society members taken from the leading members of the Court of Assistants of those bodies. My Lords, it was thus, therefore, that those leading gentlemen of some of those Companies, under a certain degree of pique at having lost their election, have instituted this suit; but the way in which these parties are marshalled accounts for the singular spectacle of the City of London being divided against itself; and we have to contend between the system of self-elected corporations, and the other system of applying corporate property to something like charitable and public purposes.

My Lords, I was proceeding to observe upon the question of the nature of the trust which is now vested in the Irish Society. It becomes necessary to look at the origin of the Society, with a view to ascertain what the nature of that trust is, as it is now constituted, because there is not any express deed, or any act of parliament, or charter, which explains what that is; and therefore, it is only by looking at the origin of the transaction, and the usage that has since subsisted, that the nature of the trust can be discovered. The mode in which my learned friend opened the case was very consistent with what we hear at the present day, of a number of persons combined together to lay out their capital in a certain undertaking, and the property is purchased in the name of somebody else; and then it follows that those persons have the result of their money—and that was the way in which it was put, as a resulting trust, on the ground of the persons in whose names it was taken being the agents or the trustees of others. But suppose that view to be borne out by the facts, they omit this most important consideration, that it was not simply the act of the Companies, but that the Companies did not approve of it—which they did not—and it was not the act of the Companies of the City. They omit the very important consideration that there was a third party in the origin of this matter. The property was vested in parties who had a right to impose and make such terms with respect to the regulation of the whole concern as the Crown might think fit.

But, in the next place, look at the origin of this Society, and is it in the slightest degree borne out in fact that this was a voluntary association of the Companies for the purpose of making a kind of partnership in this undertaking? Now it is perfectly plain that it was neither a voluntary association, nor was it an association of the Companies themselves. That notion therefore of the agent or trustee fails entirely; it was not the voluntary act of the Companies, but what they did was by the compulsion of the City; they were ordered to do it, and they obeyed the orders of the City in collecting from the individual members of those Companies the sum which the City, under the command of the king, thought fit to impose



upon them. It was in that way unquestionably that the money was raised ; it was not raised voluntarily, and that puts out of the question all notion of its being the result of contract or undertaking, or any thing in the nature of partnership. If a number of persons agree together to lay out their money, they are partners, and they have a right to the money laid out, but that supposes them to be contracting parties ; that supposes the money to be thus advanced in contract ; it does not apply to money raised from them by exaction, whether legal or illegal, and I presume that this was according to the notions of that day legal ; it does not apply to money raised by exaction, and as to which they are not voluntarily paying the money.

But for another reason, does not this argument which I put apply to this case ? It is said, there is a resulting trust to the persons who advanced the money. Then who advanced it ? Did the Skinners' Company advance the money, or any portion of it ? Did either the Company itself, or the Court of Assistants of these Companies, who very likely may be the ancestors of the present Court of Assistants,—for they go very much by hereditary descent, and the present gentlemen may be the descendants of the Skinners' Company in the time of James the First,—or did they, as the persons whom they represent, or the Company *qua* Company, advance the money ? No ; the fact was, that this money was raised not voluntarily, and it was paid by the individual members of those Companies, exacted from them by a poll tax ; whether legal or illegal, it was raised by a poll tax upon the individual members ; and the Companies *qua* Companies acted only in obeying the command of the City, given in the name of the king, for laying on exaction upon the individual members. They were simply the tax collectors, and the notion here held now is, that where money is thus raised for taxation, there is to be a resulting trust, not for the tax payers, but for the tax collectors.

My Lords, this is not all the difference that has existed in this case. It is not only that there was no voluntary agreement as to an absence of any payment of the money by those persons, but it is that the whole business of this matter was managed, not by these Companies, not by their delegates, not

by any persons acting for them, but by the City itself, or the Common Council, which is now a distinct body from the Companies, though containing many members of those bodies. I have never seen any thing more ingenious than the mode in which the creation of this trust has been dealt with by my learned friends on the other side. They have made it appear, by the kind of way in which this case has been stated,—alluding first of all to one occasion upon which there were delegates appointed from the Companies—for there was an occasion when delegates were appointed from the Companies—for purposes of leading to the result which I shall shortly notice. I have stated how they explained the commencement of this transaction; and then, in going on and stating all the rest of the origin and history of this Society, from its early period and the negotiation of the Crown, it was stated so as not to draw the attention of the Court to this important distinction,—when all these negotiations took place, not by or with any commissioners appointed by the Companies, but universally; and in every instance, every thing that was done, was done by persons appointed by the City, or a distinct body of the Common Council of London. My Lords, when this bill was originally filed, the original bill stated, “That when the king was desirous of forming this plantation, he first made proposals to the Corporation of the City of London;” and it is stated that “the Corporation of the City of London, at the time of the aforesaid proposal being made, was either unable or unwilling to accept the same, and thereupon the said Corporation of the City of London, in the month of July 1609—”

Mr. WIGRAM.—What are you reading?

Mr. JACOB.—This is the original bill, between folios 6 and 7. “That the Corporation were unable or unwilling, and they made proposals to the principal corporate Companies within the City of London, to undertake the planting and establishing the settlement or colony. That the said proposals so made to the said principal corporate Companies within the City of London, were in the first instance declined by them, on account of their alleged want of means to complete the same.” And then they went on to state, that “written statements were

sent by the King to the City," and subsequently, that they stated various things that took place ; but they stated first, that upon the first proposal being made, the Companies declined. That was struck out in the amended bill, and for a reason which your lordships will soon see. They had not any thing whatever to show that there had been any delegates appointed by the Companies to do any thing in respect of this matter ; but they stated that the proposals had been made by the Companies, and that the Companies had declined. Now, I dare say that is true ;—it appears it is somewhat illustrated by what I am about to notice ; and I dare say that they had, from something they found in their records, very good reason to make the statement which they did in the original, and which is left out in their amended bill : probably if these records were searched with the same diligence which has been applied to ours, it would be found that this Company had declined the proposal. The Irish Society have no record to be found, that there had been a declining of the proposals in the first instance by the corporate Companies, and there was not, as far as they know, in the possession of the City of London, any written document which gave a distinct answer to that question ; and, therefore, they stated all they knew bearing upon the subject, and they stated that there was among the records of the City of London a resolution of the Court of Aldermen in July 1609, and copies of certain precepts issued about that time by the Lord Mayor to the Companies. It is stated, in folio 19 of the first Answer—after the King had applied to the City—the Court of Aldermen recommended, or rather ordered, that proposals should be sent to the several Companies to assemble together a competent number of the gravest and most substantial men of the said Companies, to consider advisedly of the said project ; and every Company to nominate four men a piece, so that that was the way in which there was a delegation. And then they stated in the Answer, two precepts that appeared to have been issued about this time by the Lord Mayor to the Companies, in July 1609 ; and one of them recites, that the Lord Mayor had directed a precept to collect together the grave and substantial men of the Companies, to consider of the project of the

king's proposal; and then it appears that they assembled; that the four persons so named had not duly considered the words,—  
 “ Either with you or your assistants, or amongst themselves, upon the said motives, nor were so sufficiently warranted from you, or furnished with reasons, as is fit in a matter so honourable, and of great consequence.” So that it would appear from this precept,—and this is all that they know of it,—that there had been a sort of delegates summoned, and that those persons, when they came, were not sufficiently warranted, or had not sufficiently considered, to be able to deal with the project in the manner that the king wished them to do.

Then that precept directed them again to assemble, with four of the other Companies, and to meet again upon the subject; and then there was a second precept set forth, which shows a little more the way in which these things were dealt with at that time, from the Mayor to the Companies. That refers to there having been this meeting of delegates of Companies, and their not being able to come to any result for want of any authority, or sufficient consideration; and it recites that,  
 “ Whereas two several precepts have been heretofore directed unto you and other Companies, concerning a plantation in Ireland, with the intent and purpose, that the Committees by you named, should have conferred with his Majesty in Council, of the realm of Ireland, concerning the same; but by reason of some mistaking, the Committees of the several Companies made answer in writing, before any conference had with his Majesty in Council of Ireland, which was ill accepted by the Lords of his Majesty's most honourable Privy Council. The King and the Council had not been very much pleased in finding that the Companies were deferring the project, as hath been publicly declared at a full assembly. Whereupon, I and my brethren, the Aldermen, in the presence of divers the chief Commissioners, entreated Mr. Recorder to inform the Lords that the answers formerly made proceeded out of mistaking, and not out of any undutiful intent or purpose, and therefore there was nominated for conference with the Council of Ireland, touching the matter projected, Sir Thomas Bennett and others, Aldermen and Councillors, to treat and

confer concerning the plantation, and to make report to me and my brethren, the Aldermen, of what should pass in such conference, that so such furtherance might be given as the honour of such an offer deserveth." Then it goes on to recite, that those persons, Sir Thomas Bennett and others, had been accordingly treating with the king in Council; and those persons, your lordships will find, were not the delegates of the Companies—not persons appointed by the delegates of the Companies, but they had been appointed by this Court of Common Council, and had been so appointed, because on the occasion when the delegates of the Companies were summoned, they declined to do any thing, and therefore it being ill-accepted by his Majesty the King, (the City knowing that at this time it was not well to do any thing which was ill-accepted by his Majesty,) found it necessary to take another course, and that precept directed them,—having given up the idea of any meetings of delegates, which had been found to be of no use,—at once to call together all the individuals of their Companies, to summon them together in their respective Common Halls, to answer if they would willingly contribute. That is the second of the precepts that is set forth, and then it goes on, that any of the Companies who do not attend to this summons are to be fined for contempt, and all such as are absent from the meeting intended may be dealt with all concerning the same.

So that what appears is this, that, first of all, there was a convention of four delegates from each Company, which came to nothing; then there was a treaty between persons appointed by the Common Council and the King; and then there was a precept issued by the Mayor to the Companies, to call persons together to see what they would willingly contribute. Certainly, it was not willingness, in the modern sense of the word, because it was accompanied with the words—fine in case of contempt. In those days these things were not unfrequent, as the old law-books inform us. We should certainly think it a strange thing if a man was committed by the City for managing a city or place without their leave;—but they did exercise a very large power.

My Lords, this was given by us in answer to that question,

as to whether the Companies had accepted the proposals ; and we set forth those precepts, and said that we did not know more than that, whether they were declined or not ; but it appears from this that they were declined, and by both parties,—first by the four delegates, and afterwards when they summoned the members together to know what they would willingly contribute :—that appears in this way. What they did go upon afterwards in the way of payment, was not upon the footing of willing contribution. No answer appears any where to that precept which directs the members to be summoned to know what they would willingly contribute : or if there was an answer—if there were persons who did consent to contribute willingly, certainly that was not acted upon ; because when they came to the actual raising of the money, it was determined to raise that by a poll, and to levy it, not according to any voluntary mode of contribution, but according to the corn-rate—the corn-rate being the rate by which certain previous exactions had been formerly levied upon the members of the Companies. Now, I say that all that was done was done by the City exclusively ; but after the Companies had first by their delegates declined to accept the proposals of the king, and after an abortive attempt had been made to induce them to contribute willingly towards it ; and I say that, because we find a precept calling them to make a contribution, and we find no return to that ; and we find afterwards that the contribution is not one which is willing, but upon the principle of compulsion, which was resorted to in pursuance of the powers which the City had over the members of the Companies ; and because the plan of the voluntary association had failed, and because the plan of the voluntary contribution by the members of the Companies had failed.

From that time your lordships will find, in all the acts that were done for the management of these plantations, and in the negotiations with the king, that the Corporation of London alone were the persons who had to deal with it. On the part of the Companies, from the period which I have noticed, when the precept was sent to them to know what they would contribute, which came to nothing, no intervention is found till

some time afterwards, when a precept is issued to them, ordering them in the name of the king to summon the Companies together, and with the court of assistants to tax every man what he shall pay ; not to receive a voluntary contribution, but to assess what he shall pay ; and the poorer ones are to be spared.

The next time upon which the Companies appear, is when they were summoned before the Common Council to accept the lands that were given to them when the partition took place. Then you have the persons from the Companies attending before the Common Council assisting in that division, at least to the extent of drawing lots for the shares they were to have, and receiving them in shares given to them by the City.

Commissioners, as your lordships have heard, were sent to Ireland ; and I rather think in the statement of that, there slipped from my learned friend something about there being commissions as appointed by the Companies ; certainly the whole statement of it was calculated to lead any one to understand that the negotiation with the king, sending commissioners to Ireland, had been done by concurrence of the Companies, and that it was for that purpose that the assembly of the delegates of the Companies was introduced into the bill and answer, in order that seeing the delegates once assembled, they may be subsequently connected in your lordships' mind with the Common Council ; but the commissioners appointed by the Common Council did the whole, and negotiated with the Crown up to the time when they determined to report to the Common Council, that the best mode of raising the money would be by levying a tax, by Companies and in Companies, by the poll, making a distinction there between the money that was to be raised upon the Company *qua* Company, and the money that was to be raised upon the Companies by means of getting at the pockets of individuals, with that remarkable expression,—“ that in so doing they thought it fit that the inferior Companies should be spared.” With respect to those who are here now asking, upon the footing of having been voluntary contributors, they are to be spared from being members of this sup-

posed partnership; but, at the same time, it is said that so much is the idea of voluntary contribution taken up, that even in those inferior Companies, where there were individuals of sufficient ability, those were to contribute as much as others, making use of the Companies simply as the persons who were the means of procuring this money, to be got out of the pockets of those individuals.

Now, my Lords, the mode in which this money is thus ordered to be raised, would seem to be conclusive about the notion of resulting trusts, as rights arising by contract or agreement. The precept is in the 67th folio of the Answer. I should observe upon the report of the Commissioners, that after stating the way in which they recommended the money to be raised, they recommended a levying act to pass the Court of Common Council; not that the Companies are to be asked to pay, but that the money should be raised in this way, sparing the poorer Companies; that an act should pass the Court, and that act does pass the Court without having any delegates from the Companies, except as the members of those Companies would be persons elected by the respective wards, and therefore would be members of the Common Council. The precept is issued in pursuance of that, ordering them to pay; ordering them, "That by the true intent and meaning of this said act of Common Council, your Company is to furnish and pay towards the said 2,000*l.* the sum of        whereof one-fourth part is presently to be raised and collected. These shall, therefore, be in his Majesty's name, strictly to charge and command you presently to call a Court of Assistants, and there to elect such of your Company as you shall think fit to enjoin with you, the master and wardens, in the taxing of the said sum, by the poll, within this your Company; and presently to collect the said sum, being one-fourth part thereof, in such manner as in other levies have been accustomed." Now it is stated here in our Answer, that the City have exercised, from time to time, as it is known they have, considerable power over these Companies, and have not unfrequently been in the habit of levying money upon the Companies, or the individuals, for various services; and one instance was that of the Corn Bill; and this precept



refers to it, by saying it is to be levied in such a manner. So far was this from being looked upon in a voluntary character, that the Companies, some of the inferior ones, applied to the Court of Common Council, humbly petitioning and remonstrating that the corn-rate had been unequal, and, therefore, that this fell upon them in an unequal measure, and praying that there might be a revision of that, in order that the burden might be thrown more equally. Nothing can be more foreign than this to an act of voluntary contribution. My learned friends will, perhaps, contend that this is an illegal transaction. For what the points are to be argued in the reply, when the real case, I suppose, is brought forward, I know not ; and that is one of the difficulties in this case, that it renders it necessary for those who speak in defence, to occupy more of the time of the Court than would otherwise have been necessary, because we do not know the points on which they rely. That they do not rely upon the points put forward in the opening, we know, because they are not put forward in the bill. This resulting trust, therefore, if it arose, arose from their having been the persons to exact this money. They will, perhaps, say that this was an illegal exaction, and that the City had no right to command the Companies to raise money, or to use the king's name in raising the money ; and I do not know how far that might be supported in point of law. Undoubtedly in the present day they would be very much surprised if the clients of my learned friend, Sir Charles Wetherell, were to think fit to levy a poll-tax upon the members of that Company, or of any other Company, and it would be resisted ; but at that time not only were the laws and theory of the constitution in many respects different, but for practical purposes the laws and constitution, and the whole frame of society, were in every thing that regards the exercise of power, in every thing that regards the relation of superior to inferior, entirely different from what they are in the present day. In those times there was no regular Habeas Corpus, and there was little administration of justice ; many kings were in the habit of sending to any gentleman, whose money they wished to have, ordering him to advance a sum of money, by way of benevolence ; and if that was not accorded,

the man was sent to serve in the wars in Ireland or elsewhere. These were the periods at which those things took place; they were periods in which the Lord Mayor and Common Council would have no difficulty in striking a man's name off from the freedom of the City, and of course from the power of carrying on his trade within the City; and in this mode they had enormous powers—powers which no one at the present day would exercise. If, however, they argue that this is illegal, they will then be saying this—We, the Corporation of the Skinners, combined with the City of London, in illegally extorting money from our individual members; and we claim, as between the two parties concerned in this illegal act, that there shall be a resulting trust from the one party to the other, both being parties to an illegal extortion of the money. I think that that also would be a singular mode of raising any resulting trust, supposing that this was illegal.

But, my Lords, I take it that we must assume that this is legal—as legal as the corn-rate, which is taken as legal in this Court. Then, if so, what is the true position in which the Companies stand, as having now derived certain interests in this property? Their interest no one disputes. But in what character do they stand? If the City of London had that power, and which they exercised, of raising money from the citizens of London, and taxing those citizens for the purpose of completing contracts which they entered into with the king, for the purpose of laying out that money in the way they did in Ireland;—if they had that power by virtue of their corporate capacity, then it follows that they had the power to give back the result of that which was obtained, either to the persons from whose pockets it came, or to other persons. In this case they have thought it reasonable, that the result obtained by means of this money should be given to the Companies, of which the persons contributing it were in time back members—not to the individuals, but to the bodies they gave it back; and if so, that which is given back must be taken by these Companies as having been given to them by the City, by the same sovereign authority by which it took from them the money that was invested.

My Lords, the first gift that was made to them, was that portion of the land which was divided at the period, as your lordships are aware, soon after the charter. I need not say that in what they had, or the City Companies had, they received no charter or authority from the Crown. Their names are not noticed in the charter of James—not noticed in the charter of Charles, except by reciting that at that time donations, gifts, and conveyances had been made to them, and with the intention that the Companies, as well as others, should be restored to their former rights. But at the time, the charters gave them nothing. The first right of property that they had was given to them by the City, in December 1613, a few months after the charter was given, when the City determined that they would have those lands divided to the Companies. They were called in, and took what was given to them.

Then again, your lordships are aware that the body for which we appear never could have claimed any right or interest. They were formed by the charter as a body corporate, for the purposes that your lordships have heard. But in page 25 of the copy of that charter, your lordships will see that the authorities that are given to them are authorities to be exercised “for and on the part of the Mayor and Commonalty of the citizens of our City of London, in our kingdom of England; and also in the same Court, the meeting shall and may have full power and authority to direct and ordain.” This is in the second paragraph of page 25 of the charter,—“for and on behalf of the Mayor and Commonalty, and citizens of London, all and singular matters which shall seem most conducing and expedient for and concerning the plantation.” These are the words which are embraced in the charter—which qualify the power of the charter;—and if the City of London, having exacted from the citizens the money that it did exact from them, had, after the obtaining of this charter, chosen to say that they, the City, would keep the benefit, whatever benefit might arise from those estates to themselves, like their other corporate property, and apply it to corporate purposes, those words would show that the Corporation of the

Irish Society would have been constituted,—bound as they were to act for and on behalf of the Corporation of London,—trustees under the Corporation of London. Under this charter, the Corporation of the City would have been the persons who would have the right to take whatever benefit could be derived from the lands comprised in this charter: but they did not so please; and they were willing, thinking it reasonable, if in the exercise of that power they took money from one man, and if some benefit arose which they did not want to give back to that man,—some benefit which they did not want, not because they were bound, but because they considered it right and reasonable. In that way, the City of London directed the Irish Society to convey to the Companies the lands that were conveyed. The City of London never did in any formal way direct and authorize that the Companies should receive from the Society the surplus monies arising from the infeasible estates,—the estates now in question. There is no grant of that surplus fund to the Companies, either by the Irish Society or by the City,—either with or without a direction,—there is no record produced. There is no record, I believe, existing, documentary or of any other description, on the part of the City, or on the part of the Society, which says, that they shall have those dividends arising from the surplus. The only thing which upon the records of the City produced has the least reference to the division of these surplus funds amongst the Companies is this,—that certain commissioners appointed by the Common Council had, previously to December 1613, gone over to Ireland, and had made a report of the result of their journey. In that report, those commissioners recommended the division of the lands, which took place. They stated, that they had made twelve allotments for the purpose of division between the Companies. They went on to state that with respect to other lands, those now in question, that they could not be divided; but they said that the rents and profits may be divided amongst the Companies. That report is delivered in by these commissioners to the Common Council, and it is said that the Common Council approved of that report, and they afterwards formally acted upon

that portion of it which relates to the division of the divided land. That cannot be said to amount to any thing like an express gift of those surplus rents to the Companies ; but it amounts to an intention on the part of some one, that they thought it reasonable that they should have them. But I do not on that account, though thus observing upon the origin of their right, mean to impeach their present right. I say, How did it exist at the time that this charter was granted ? Since that time the case has varied. The year 1623 was the first dividend that was made among the Companies,—the first time, I presume, that the Society had a surplus in hand ; and there was a division of as much as the Company thought it proper to divide. Now that course was continued from 1623 to the present time. There is the usage of more than two centuries ; and I do not here dispute, and I think it clear, that an usage of more than two centuries of one mode of disposition of the trust fund is sufficient, as against other persons interested in that trust fund which they have all along acquiesced in, to establish a right in it. The City of London have not, I believe, any intention (we state by answer they have not) of disturbing the state of things which has existed for two hundred years. We claim no right to disturb the right of the Companies to this, because it has existed for so long a period. But then, my Lords, if you find that the natural interest which we have in these surplus dividends is a right or interest not founded upon a resulting trust,—not founded upon express trust,—and founded upon contract arising in the origin of this transaction, what is it that institutes evidence of this ? It arises from the acquiescence of the City of London, evidenced by an usage of two centuries. My Lords, if that right,—a right which no one disputes, but which exists, and which I hope we have shown to be founded, as upon its only title, upon usage,—if that be the origin of the right, that must be the measure of the right. If it depend upon usage, it must be also coextensive with usage ; and it cannot be said because we have for two centuries by usage enjoyed the net rents of these estates, therefore we will now say that we are entitled to the gross rents ; because we have had the surplus which happened

to be left, we are entitled to the whole. No; the right depends upon the usage,—the usage regulates the extent of that right,—and you must have it subject to those discretionary charges which usage proves to have existed in the matter.

My Lords, these are the observations with which I shall trouble your lordships upon the origin and nature of this Society, observing further, in illustration of the arbitrary powers exercised by the City authorities, upon the mode which they have adopted of dealing with the money for the benefit of the Companies. Your lordships are aware that the number of Companies who were taxed for the raising of the money for this plantation was somewhere about fifty; by some means or other they are reduced at present, upon the record, to forty-four, or thereabouts; but in the origin they were about fifty. With respect to two of these, their rights have been dealt with in a singular manner—the Coopers and the Brown Bakers. We find it stated, that at one time the Coopers and the Brown Bakers did not pay any thing at all,—they begged to be excused; and the Corporation of the City, of their own authority, as far as it appears, at once declared their rights and interests forfeited. This was the course in which the City chose to deal with them; I apprehend they had the title to do so; I apprehend they might have done so with the whole. There was no one that said, that they should give back any portion to the Companies.

In this way, my Lords, the Society was formed: they have continued in this manner for a period of two hundred years to receive those monies, and to receive them in a manner which seems to show that it is fairly by gift and allowance from the City, evidenced by the acts which the City have done, by giving them those portions and the continued usage since.

Now, I was about to say that there were about fifty Companies equally interested (if it was interest); if they were the subjects of the City acted upon by the civic power, then they were not to have any interest, except such as the City chose to give back; but there were fifty of them standing in the same condition, and to two of them the City said, that they would cease to have any interest. Then, with the rest of these Com-

panies, in what manner did the City act? If there were fifty *cestui que* trusts, fifty tenants in common, in certain proportions—any one of those, if there was to be a division of land, as a matter of right, any one of those Companies had just as much right to have his share assigned to him as any other had a right to have a share assigned to him :—there are the Skinners, and the White Bakers, and the Stationers together. The White Bakers had just as much right to have a portion of the land given to them as the Skinners had, and instead of there being twelve allotments there would be fifty allotments. Is that done? No! The City and the officers of their own authority, without contract, or law, or license, as far as appears, choose to say,—“ We will divide them into twelve lots, and we will give one of those lots to each of the twelve great Companies, but not exclusively for itself, but also for itself and some others;” the money they divided into twelve shares, and took one Company, which had contributed a certain sum, and added certain other Companies to make up the twelve: thus, one twelfth went to the Skinners, the Stationers, the White Bakers, and the Girdlers. It appears in page 36 of the book that the Skinners had contributed 1963*l.*; the Stationers, 520*l.*; the White Bakers, 480*l.*; the Girdlers, 370*l.*; and those sums together made 3,333*l.* being a one-twelfth proportion. Now, my Lords, if there was to be a division as matter of right, it is quite obvious that the Skinners had no right to have conveyed to them more than the quantity of land proportioned to 1,963*l.*; and on the other hand, the Stationers were entitled to have a portion of land corresponding to 520*l.*; and the White Bakers, who are not here objecting, they would have had a piece of land proportioned to their 480*l.* But what was the course that was taken? The City say,—“ We will not give you any allotments of land; but, if you choose to associate with your minor Companies, we will convey the allotments of land to the major Companies, which are understood to be for their benefit, and for you the minor ones associated with them.”

Thus, then, the Skinners got one-twelfth share conveyed to them; but that does not belong to them, it belongs to them in the proportion of 1963*l.* to 3000*l.*; and the rest of that, accord-

ing to their aliquot sums constituted, belongs to the Stationers, the White Bakers, and the Girdlers. What right had the Irish Society to do this, except that they might do it at their will and pleasure? and they did it, as it has turned out, to the great inconvenience of those minor Companies, and without consulting them they chose to make the conveyance in this way. That led to this—the Skinners have a greater proportion of land than they are entitled to, and they ought to account for the proportions of those to the minor Companies, but the minor Companies were not bound to have the Skinners inflicted upon them as intermediate trustees; they had a right to have their dividends directly from us, if it was a matter of right, without being obliged to have their lands and their dividends through the hands of the Skinners' Company. So, in the same way again, with the payment of those dividends that have been paid from time to time; the payments have always been made, not to the fifty Companies, who are the parties interested, but to the twelve Companies. And it has been understood that the twelve Companies are to be trustees of the portions of those dividends for the minor Companies, who are upon this occasion associated with them, and put into partnership with them, by the City. That part of the practice they desire to deviate from. The Skinners get one-twelfth, partly for themselves, partly for the Stationers, partly for the Girdlers, and partly for the White Bakers. When they are here upon the subject of the execution of one trust, one would be glad to know how they execute their trusts as between themselves. It does not appear that they execute their trusts in such a manner as to give any great satisfaction to the minor Companies, so as to induce them to cooperate with them upon this occasion; for it so happens that, when they are suing on behalf of themselves, Mr. Seaton, for the White Bakers, comes to oppose them; and I have not heard of any one appearing on behalf of the Stationers and Girdlers; but I believe that the Stationers are not amongst those who have authorized the Skinners' Company to appear for them—they appear by other persons. I am told that the Girdlers oppose it; but I am told that they have not authorized the Skinners' Company, or their counsel, to attend



for them. I do not know what degree of harmony may exist between the Skinners' Company and their own *cestui que* trusts, but they do not exhibit harmony in their appearance before your lordships' Court.

That arbitrary mode which the City took of huddling these Companies together in lots of three or four without consulting them, has led to this—that continually, through these proceedings, the twelve Companies have talked of themselves as if they were the owners of the property, and have assumed to themselves the arbitrary control: for example, they had sufficient influence with the Common Council to get members of the twelve Companies always elected members of the Irish Society; and I presume that they will say is their right. But if these members were in any way elected because they represented persons interested in the property, there ought to have been members of the fifty Companies, but they were excluded, and members of the larger Companies only were upon that board.

In the year 1831 or 1832 the City of London thought it fit to correct that practice. They could see no reason why the members of the twelve Companies should conduct the Society, when it belongs as much to the other Companies as to those twelve; and therefore it was thought fit to extend the election to the fifty Companies, and to some of those that were inferior Companies at that time, and that were therefore spared. Now it led to another peculiarity, which is this:—your Lordships are aware that the conveyance made to the Companies by the Society was under a license of mortmain from the Crown:—it was a license to accept so much as the Irish Society should be willing to grant. Now, there is this peculiarity about it—that that license of mortmain only authorizes the Society to alienate to the twelve Companies. That again perhaps was some instance of the twelve Companies having got a little more control over this matter than their character of *cestui que* trusts for the inferior Companies gave them a right to retain. That alienation took place; and it is curious, that though the other of the fifty Companies are entitled in equity to their aliquot portions of those lands which are vested in these Companies, though no

doubt the Stationers, and the Girdlers, and the White Bakers, are entitled to their aliquot share of the lands now vested in the Skinners' Company ; yet these three Companies have no power under which they can hold lands in mortmain in Ireland ;—that difficulty has arisen from the mode which the City adopted of managing the property in this manner.

Now, my Lords, with respect to the usages that have prevailed in this Society, I would only shortly notice the terms of these letters patent. One ground which alone, as I apprehend, is sufficient to support the rightful exercise of those powers which the Corporation of the City have always exercised, is that those powers are vested in them by those charters specifying the purposes for which they are created. Now, as I observe, the Crown had a right to impose whatever terms and conditions it chose in the forming of this colony ;—the Crown had a right to say—We will not grant the lands to you unless you take care that there shall be corporations in Londonderry and Coleraine ; and unless the lands are placed under the command of those other corporations which we, the Crown, choose to create, and which shall always be placed under the control of the Corporation of London :—and this they exercised, and the Crown chose that there should be a perpetual succession of this mode of dealing with it.

On the part of the Crown, it was perhaps singular that there should be a body constituted in London vested with powers of this extensive description, in such large words as having the plantation and the government assigned to them, to regulate in such manner as to them shall seem expedient ; and that they shall have the government of the lands in Londonderry, and that accompanied with grants of land—the lands enumerated, which are about 44,000 acres ; and there is a vast quantity besides the number of acres which is not specified. I see that in the time of Charles the First it is estimated that the quantity of land given was 90,000 acres, or thereabouts. In this charter I counted about 44,000 acres, that is, besides land not enumerated ; all this is vested in this body. My Lords, this would not be the mode of proceeding probably at the present day : the Crown would not be likely to adopt or desire to adopt it.

Something a little like it was not, however, uncommon in the colonization schemes of the Crown in former days. It was not uncommon for the Crown, in the establishment of a colony, to vest in a body, or in an individual, certain powers with a tract of land. The East India Company is the largest instance of that, being a trading Company with powers of the usual extensive nature, and even of a regal nature, subject only to the Crown. The African Company, which managed the settlements of Cape Coast Castle, and which was a trading Company, and had a species of regal powers, was an instance of the same kind. Something of the same kind existed in the proprietary government in the colonies of America, and all of those had more or less of power. The Hudson's Bay Company is something of the same kind; and at early periods the Crown of England deputed a certain portion of regal power to individuals or bodies; and upon the same plan, indeed, were the municipal corporations formed throughout the country, which were vested with a certain portion of regal power in the district committed to their charge. Now all of these in different countries, and in different degrees of power for different purposes,—some with powers of trading, and others with powers of governing,—all were subject to the general power of the Crown. And then, with all those bodies, there has been a very considerable change in the nature of the power—time has worked upon their powers. The East India Company has decreased in their powers; the proprietary governments in America have gone on declining, as they have from time to time alienated the lands, and made themselves poorer; and as the population became greater, and as laws were enacted of local taxation, their powers amounted to nothing at the time when America became independent; and their powers generally have no doubt been changed. The sphere of their utility has been changed by various things that have taken place since. There is not the same necessity for building churches now as then; here is not the same large scope; but still their powers remain the same, and they are now existing for the same purposes as they were then, and not

capable of being altered from those purposes, unless it should please the legislature to make any alteration in that respect.

Now, my Lords, looking at this charter, the words are most ample, and the objects are most ample,—the object of this last charter being, as it is expressed, “for the better order, direction, and government of all and all manner of things concerning the government of Londonderry,” &c. [*reading the charter to the word* “granted.”] And what is the object there recited? The object is, that a new corporation should be formed: “and for the further and better planting,” &c. [*reading the charter to the word* “inhabitants.”] Having before recited that we have granted divers parts of the land to twelve Companies, it recites, as part of the object, “that the said Company of London and their assigns and undertenants in our Society, and other Companies,” might, according to their several interests, hold the land as they did before; and that accompanied with a general power of supply and establishment, in as large words as can be conceived. There is accompanied with that a specific power of regulating the corporations of Londonderry and Coleraine, and not a power simply of regulating the by-laws, and confirming by-laws, but in much larger terms,—all ordinances of every description, extending to every species of regulation; every thing that those corporations could do—they are formed for that purpose. There is given them a lease for a certain number of years of the customs of Londonderry; there is given them a right of the port of Londonderry; and there is actually in this charter, in page 72, a clause by which no persons, as I read it, are allowed to unload any thing at Londonderry without the license of the Society. They are made the sole governors of the port of Londonderry. They have also this grant to them, that nobody can, without their consent, export any flax, hemp, or wool, or any linen yarn unwoven, at any time whatever. There is given them, moreover, something of the character of regal power, the right of creating manors, which would exist otherwise only in the Crown, and the powers of the Vice-Admiralty of the Court of that part of Ireland.

But I say, look at this as it stood at that time. My learned

friend Sir William Follett said, when he got to that point at that period, they were trustees of the Companies ; and the Companies had the right to claim. And not only that, but one of my learned friends better expressed it, that the Society were made as the conduit pipes, to convey the lands to the Companies. Were those the conduit pipes who were to have the sole right of regulating the commerce of Londonderry, of regulating the Vice-Admiralty, or that reservation that is made? Are these to be dealt with as matters of property? It is clear that they are not; that the Crown did not so intend;—that the Crown, which created these Corporations, did not intend that those rights or powers should be treated as matters of property, to be made the subject of litigation, or of partition, or of transfer to others. The Crown has vested these rights. It was idle to say, that at the time that this charter took place, any body could have said that these were simply naked trustees—conduit pipes, to convey the lands for those purposes. If that was not so, what has happened since to affect the powers of the Society? Their charters remain unaltered,—no change has taken place in that. Nothing has been alleged by my learned friends to show that any intention there expressed had been changed. Then what makes any difference? The portions of the land have been alienated to the twelve Companies? Be it so. We have given away certain estates to the twelve Companies. If so, it diminishes the quantity of revenue which this Society has demanded; the amount of money that they can dispose of, that they can deal with, is less. But how does an alienation of a portion of land take from them any portion of the powers entrusted to them by the charter? It does not: the powers and duties expressed by the charter remain in them, although, perhaps, with diminished means of executing those powers, by reason of their having diminished resources. I say, therefore, if it rested upon the charter, the rights and the powers are sufficiently evident. But we may also look at the continued usage, for so long a period, up to the present time, existing in what I thought my learned friends in their opening scarcely mentioned. Your lordships have seen the accounts of the Society, showing

that there was a regular expenditure of five or six hundred pounds a year in maintaining the schools. I hardly heard the word schools mentioned in the opening of the case ; and it was said, if they had done any thing for the benefit of Ireland ;— it was said *if*, as if it was doubtful whether they had expended any thing. But your lordships see the expenditure going on up to the filing of the bill, in the book which this Society has now published to the world. Now the expenditure, at different times, is to be found throughout the book, which your lordships have ; and with respect to which it is unnecessary to go through the particulars. It would have been sufficient upon this part of the case, if the Society had simply stated that they had, from time to time, employed money in this manner. We are not now arrived at the time when it is necessary, in order to prove that, to enter into particulars, and to show, from half-year to half-year, what particular sum has been expended. It would have been sufficient if the Society had left it upon the general statement,—that statement which they have made in their Answer,—where they give the entries in their books of charitable and other donations ; and end by saying, that these are only a few of the many instances of the same kind that appear throughout their books. But if your lordships look through this book, you will find instances of the exercise of their discretionary powers in a much larger degree. From this book your lordships will find that they used to have sufficient influence to nominate the members of parliament for the borough of Coleraine. There are several entries in this book of their recommending the persons to be members for Coleraine, and the inhabitants of Coleraine were in the habit of attending to their recommendation.

Your lordships will find, in some portion of this book, that they were in the habit of issuing precepts to the Companies. There are some of these precepts shortly after the Companies had had their lands allotted to them. The Society issued precepts to them, giving them orders what they should do. In page 44 of the book you will find that precepts were issued to the Companies, requiring them to give certificates of what they had been doing. In page 43,—“ A conspiracy

was entered into by some of the native Irish, and thereupon precepts were issued to the twelve Companies to furnish arms and military accoutrements, that were to be transmitted by the hall-keeper of Guildhall to Ireland, for the better defence of the plantation:" and in page 45, precepts were issued to the Companies, requiring each of them to send one or two artisans, with their families, into Ulster, to settle there; and directions were also given to the Companies to repair the churches in their several proportions, and to furnish the ministers with a Bible, Common Prayer Book, and a communion cup. Of course the instances are too numerous of the mode in which the Society acted in that way for me to read. For some time they are to give land upon beneficial leases, for public purposes, to the chapels. The Recorder of Derry at this day enjoys a park, called the Recorder's Park, let to him by the Society at a nominal rent of 5*s.* per annum: the allotment of the Recorder was much larger at an earlier period. In page 47 your lordships will find that the commissioners sent out by the Common Council—"granted 500 acres of land, (which had formerly belonged to Rory O'Kane,) to Mr. Carey, Recorder of Derry, during his life, paying the usual rent of 5*l.* 6*s.* 8*d.*, he having no salary, which they conceived to be the best way of giving him satisfaction without charge to the City:"—so that we find the Corporation giving away these sums for that purpose. It goes on,—“They caused the town-clerk to be reinstated in his office, he having been suspended therefrom.”

— In page 46—"they assign forty acres of land to the parson of Coleraine. They stated that the advowsons within the City's undertakings were bestowed on English ministers; but the churches were represented as uncovered."

It is stated also, in page 48, that they had allotted 300 acres to a free-school when it should be finished; and that out of the 4,000 acres of land to be laid to Derry, 3,217 had been granted to the mayor, or otherwise laid to houses.

Now your lordships will recollect one of my learned friends said that these charters provided plenty of funds for the corporations of Londonderry and Coleraine. I have not been able to find any portions of the charter which gave any pro-

perty to these corporations, unless it be that they might have the tolls of fairs and markets. But they were not so fortunate as the bodies in London. They had not the power of taxing by poll from individuals—with the money purchasing estates, and keeping them to themselves as part of their corporate property; therefore I do not conceive what other means they had of acquiring property. The truth is, that those corporations erected no public buildings: all the public buildings were those that were built by the Irish Society, or out of the profits of lands let to these Corporations on beneficial leases, and they held them in that way. In the schedule to our first Answer, I find among the list of the property belonging to our Corporation, is—

“A. The court-house and jail at Derry, and the court-house and jail at Coleraine, were built by the Irish Society, and held by leases under them:” and it appears at this early period, that they had allotted 3217 acres to the mayor, or otherwise laid to houses. There are a great number of entries in the early part, about the fortifications, and one of the levies of money that was raised by the City after they had raised 50,000*l.*; upon one occasion, they made a levy of 2,500*l.* for the fortifications, and directions are continually given about the fortifications, and about the gunners, and others.

My Lords, a great number of those instances that occur throughout this book, of the way in which this Society have been acting, have been already stated to your lordships. Some of the objects to which the Society have applied the money, will, I think, appear to your lordships, to form one of the best things that is in this book, which is in the report of the proceedings of a deputation of the Society, that went over to Ireland about the year 1819. They were sent over by the Society from England, and their instructions are given in page 152 of the book. Now, those instructions relate partly to public matters, and partly to matters of their private duties. The first instruction was,—“That the deputation should require permission from the corporations of Londonderry and Coleraine to inspect such of their records, accounts, and corporate muniments, as in any way relate to, or affect the civil government of their respective corporations, or the rights of this Society:” and then



the next was,—“ That they were to settle with the corporation of Londonderry some questions about boundaries of holdings under this Society;” and the fifth was,—“ That they do immediately insist upon the immediate resumption of the Society’s right, as granted to them by their charter, and heretofore exercised by them, of confirming the by-laws of the corporations of Londonderry and Coleraine.” It appears that those corporations have not been always quite dutiful towards their parent, the London Society. Sixth,—“ That they do view the various charitable and other institutions, in the city and county of Londonderry, and town of Coleraine, to which the Court do now subscribe, or have heretofore subscribed, in order to ascertain whether their bounty is or has been properly applied.” And then the ninth was,—“ That they do view the rectorial and school-houses at Coleraine, now building by the Society’s aid, and to report thereon. That they were to adopt some plan in conjunction with the corporations of Londonderry and Coleraine, to mark the boundaries,” &c. And the twelfth was,—“ That they were to give a report upon the state of the lands, tenements, and hereditaments belonging to the Irish Society, in Londonderry and Coleraine, their opinions as to any improvements which can be made thereon, and any other matters which they may consider as conducive to the interest and dignity of this Society, and the welfare and prosperity of the plantation.” There are a number of letters afterwards, showing what this deputation did. They seem to have had a good deal of business with the corporations of Londonderry and Coleraine, having questions with them with respect to lands that they held under the Society; and it seems that they had for some purposes been disputing the right of the Society to some portion. The business resulted in their agreeing with the corporation of Londonderry, and their taking new leases upon somewhat beneficial terms. I observe, for instance, in page 165, a letter from the Recorder, Sir George Hill, foreman of the county of Londonderry grand jury, thanking the Irish Society for having come to an eligible arrangement with respect to the County House, being the house in which the grand jury met, and in which the assizes were held, and which it appeared belonged to the Society. It

appears by this letter of Sir George Hill, that the Society would accept of a surrender of the present lease of the County House, and grant a new one of the entire of the premises, including that part, the lease of which has expired, renewable for ever, reserving to the Society the present rent and fines, on the condition that no alienation of the property should take place by sale or otherwise, for the purposes of profit to the corporation; but that they, the corporation, should, as trustees for the grand jury, be bound in the new lease to use and apply the County House for the purposes originally intended, as a place of accommodation for the judges, grand juries, and gentry of the city and county. This is one of the acts which the Society were then doing, my Lords; being a renewal of the right of the grand jury and the corporation of that place to this building, the County Hall, which was to be used for county purposes. and which had been originally built upon the land of the Society, that was renewed upon this occasion. This deputation agreed also with various other persons with respect to their lands; and I see in the end, in page 179, at the bottom, it appears that they recommend a lease to be granted of a piece of ground in Ballynagowan, called the Recorder's Park, to the Right Honourable Sir George F. Hill, Baronet, for so long time as he shall continue Recorder of Derry, at 5*s.* a year; and probably that was the same or some portion of the land which had belonged to Rory O'Kane, and which had been granted two centuries ago to the then Recorder for his life, as the best way of satisfying him. They also in page 180 recommended that Sir George Hill should "hold the Race-Course Bog under the Society, during its pleasure, for the preservation of the Race Ground and Turbary; the former as a trustee for the public, and the latter for the benefit of such of the Society's tenants as were entitled to cut therefrom, he paying an acknowledgment to the Society of 28*s.* a year, but to cut no Turbary himself." That Race-ground transaction has been confirmed subsequently by one of those Acts of Parliament vested in the corporation. In the lower part of the same page they recommend various donations of various kinds; and, amongst other donations, 10*l.* to be

given to the Catholic chapels; and when that report was made, the Society confirmed that report, with the exception of that donation of 10*l*.

Lord Commissioner PEPYS.—It can hardly be disputed on the other side, that there is a discretionary power in the Irish Society with respect to the estates in Ireland.

Mr. JACOB.—There are numerous instances of it, without specifying them; the instances are innumerable, and the extent to which it has gone cannot be disputed. My Lords, that being the case, taking it that this rests upon the usage, we contend that it is clear that they have the right to continue that course in which they have continued up to the present day. It may be said, What is there to compel you to do it?—is there any ground? I take it that there is. I take it, that the Crown would have a right to do that which it did in the time of Charles the Second, not in the summary mode, but by an instruction to them to perform the intention;—that as the Crown granted this charter, the Attorney-General would have the right to enforce it, or to call for the respect of the charter. But if not, there are means by which it would be compellable upon them; and whether that be so or not, I say, if it has gone on for two centuries, can it be disturbed, or would that alone not be sufficient to suppose that it must have had a legal origin? But I take it all this has emanated from the general objects of the charter as recited in it, and from those general powers which are vested in them. My Lords, it is not from any particular stipulations in those charters. There is no covenant in the charter by which to bind the Society to keep up the schools. My learned friends may say, schools,—they are something express, because the regulations expressed that there should be a number of schools erected; then if so, where do you find any thing in the charter about schools? Nothing. The schools have existed, and do exist up to the present day, and the expense of them forms a considerable sum in the disbursements—for they are annual disbursements. What clauses, then, are there that create this? If you say we are not to expend money in this way, because there is no covenant in the charter, I ask whether any covenant and usage that are equally

unenforced by the covenant are included in those general powers which appear upon that charter.

My Lords, the gentlemen who appear before you must establish,—first, that there is that species of trust which they speak of,—and secondly, that that has been abused; and upon that point of it being abused, it must be some very enormous species of abuse that would call upon this Court to interfere with that discretion,—it must be a fraudulent exercise of discretion,—not an error of judgment, but a fraudulent exercise of discretion. Then, my Lords, what are the acts that are here complained of? Amongst others, it is a serious matter complained of, that they have granted leases renewable for ever. They did so once, and therefore that is one of the complaints that is urged in the bill filed in July 1832; they not stating to the Court the fact that that Society, of which they are complaining, had, in February 1832, passed a resolution, that they would not grant any leases renewable for ever,—and that bill was filed in July. What is the other? That they had not delivered accounts. On that matter they have acted under opinion,—opinion as good as the country could afford perhaps; but they have declined, under advice, to give accounts in writing. They have given unrestrained access to documents in their possession, and to this very Company, who make that complaint some years before the filing of this bill, and the clerk of this Company instructed the counsel to make the complaint.

But, my Lords, is it the real ground of complaint? I believe it is not:—that is of a different description. Four or five months before the filing of this bill, this Society had, for the first time, determined to do that which it would be a good thing if all others did—they had determined to print the accounts for eight years then last preceding. That was begun 1832; and it was in that year, when the accounts were first printed, that the Skinners' Company came forward with the bill. I do not wonder that the Skinners' Company, and some of the others, did come forward with this bill when they found the extraordinary spectacle of a city corporation publishing their accounts. It was throwing a reproach upon many other city bodies; it

was setting a bad precedent, which was one of the most alarming in its consequences. These Companies might be asked, by and by, Why do not you publish your accounts? if they had not *in limine* stopped the interruption of that wholesome practice of entire secrecy in matters of this description which had prevailed.

Then a complaint is made of the management of the trust of this extensive property, requiring a great deal more of labour than other property of a similar amount of income: it is a property consisting of an immense number of tenements, having to do with an immense number of persons, having to do with fisheries more difficult to protect than any other, and those fisheries being at a distance from the place where they are acting. A complaint has been made of the expense of management. It is said that they are actually paid fees upon their attendances, and the expenses of their dinners, out of those funds. Now all these things that are here complained of were those things that have been done for above two hundred years by the very Companies themselves during their government; and it will appear, if your lordships look at that account, that the largest expenditure upon the dinners and attendances was in the last year of the dynasty of the twelve Companies—it got to its maximum then, and it has since been diminishing. Your lordships had not the opportunity of seeing the state to which it has arrived in the last year, because we are here upon the Answer that was filed two years ago; but even during the time, you will see that there has been some diminution in those expenses. Now the times that my learned friends have referred to have been in the period between the filing of the bill.

Mr. WIGRAM.—Are you referring to the period since the Answer? We know nothing of it.

Mr. JACOB.—This paper is every where over the City.

Mr. WIGRAM.—This is not an account to which you are pledged; you must put a limit one way or the other.

Mr. JACOB.—I have said—and whether my learned friend objects to that I do not know—I have said that your lordships are not able to look at those accounts.

Mr. WIGRAM.—I do not know what those are.

**Mr. JACOB.**—My learned friend is instructed by those who do know what they are, and they have instructed him to desire that they should not be seen. My Lords, I take it not upon that account, which is rejected, but upon the schedule of the Answer to which my learned friends have referred for their statement of the expenditure since the filing of the bill; and their statement is, that the expenditure, fees, and attendances, from the filing of the bill, that is, the 27th of July 1832, to the 29th of September 1834, was 953*l.*; and that during that time the expenses of entertainments had been 895*l.* My Lords, as I quote it, that being a period of twenty-six months next after the filing of the bill, it would be about 800*l.* a year, the two expenses together, for that part of the period. What it is now is another question; but in the period of the last year of the reign of the twelve Companies it had amounted to 1200*l.* for those two objects.

Now, the expenses of dinners are complained of:—that this sort of complaint should be made by the sort of Company by which it is made,—that it should be made by one of the City Companies, aided by certain others,—is certainly one of the most extraordinary things that can be conceived at this period of day; for, what are those City Companies themselves,—that exist, not for any of the ancient purposes, or for the regulation of trade, except with two or three of them? The Goldsmiths, the Stationers, and the Apothecaries, have still some public duties to perform, and some public trusts; and the other Companies have also charitable trusts that have been reposed in them by individuals; but in their corporate character, I am not aware that a City Company has any thing to do excepting what relates to matters of dinners. It is for dining, and the matters connected with it, that their corporate powers exist, and to that their corporate functions are limited; for what is it they manage the estates, but for that purpose? It all ends in dinners; they build halls by which they ornament the City,—but what are they for? They are halls for dining in, and so their whole functions and corporate powers are confined to the eating of dinners, to the ordering of dinners, and to the paying for dinners, and to the collecting of rents with which

the dinners are to be paid for; and I believe that in this way you are correctly defining those Companies, which now no longer have any thing to do with their original intent, with the exception of some few. The Skinners have nothing to do with skins, or any thing of that description, and so with respect to the others. There are the Merchant Tailors, who have no tailors among them;—the Fishmongers, who would spurn the idea of having a fishmonger in their body.

Now, these bodies, constituted as they are, are most admirable bodies, much better than any other associations made for the purposes of dining, because they have large funds with which the dinners are to be paid for;—how acquired, we see a little from this case, by levying poll taxes upon the individuals who were members of the body. They are connected with no trades,—selling nothing, except selling the freedom of their Companies, but with nothing else is it that they have dealings in trade; and yet it is from those bodies that the complaint arises that it is an enormous thing that money should be spent in dinners; and these very surplus rents that are now the subject of contention here, where are they to go to? In what way, if they became the property of the Skinners? they would make but a trifle,—they would make but one or two extra dishes. It is in that way, and I defy them to show that there is any other purpose to which they are to go, and of course the same with all the rest of the funds and revenues.

Now, my Lords, the whimsicality of this species of objection is not, as it seems to me, less manifest from the circumstance that we know that the same practice prevails every where—prevails throughout the body of which the Irish Society forms a part—for the Irish Society is nothing but a committee of the Common Council, differing from other committees in the circumstance of its being itself a corporation, whereas the other committees are annually elected. There are other committees for the management of the various affairs of the City. The Common Council of the City has many of the most important public duties to perform. Now the City has that duty to perform by different committees—and does not the practice exist, in the performance of duty of the members who

perform it, of dining together?—does it not exist in all the Committees of all the Companies that ever were formed? Nay, more; does it not exist in every body throughout this kingdom, in every body corporate or not corporate, which meets together for the purpose of conducting business of this description? It has been so up to this time. I should not wonder if some alteration took place; because, in looking at the New Corporation Act, I do not know that any reservation has been made for dinners, and it will depend upon the construction to be put upon it, whether it will allow dinners in future; but up to this time the practice has been so every where; and I am not aware that it has been deemed a breach of trust on the part of the East India proprietors, that they should entertain a governor-general, or probably at other times entertain themselves: I am not aware that that has been held with respect to any other public bodies.

This same sort of argument is somewhat more whimsical, if we recollect the place in which the argument is presented to the Court—in the common dinner hall of Lincoln's Inn, where we find in sight that table, at present bearing the insignia of the judicial office, but which at other times groans under burthens of a very different description, by which, if the argument of my learned friends is right, breaches of trust of the most gross description have been for many centuries daily committed, term after term, and that by a body of men who, if they have been doing wrong, are not, like the City Companies, able to plead that they have erred in consequence of ignorance of law or equity.

My Lords, I dwell upon this point, because the example does not rest here. It is not only the City Companies; it is not limited to one side of Temple Bar, but every where the same thing exists, and I dare say will continue to exist for a considerable time longer. I think, however, upon this, that I can show a precedent, which the Skinners' Company will acknowledge to be a good one, and which this Court will acknowledge to be a good one. There was a case that occurred in this Court, of an information against a Corporation, for one of the charities committed to their care; there was a charity vested in



them, and they had no doubt by mistake kept the property as their own, applying it to the usual purposes. It was brought before this Court by an information, and certainly there was no great deal of harshness exercised towards the Company, because they were ordered to account for the money received from the time of filing the bill; and they were allowed to receive all their costs, sustaining their claim as solicitor and client; but after that, it was considered necessary to refer to the Master, to approve of a scheme for the maintenance of Tonbridge School. In the course of that scheme, this point occurred. It seems that either by the will, or in some other way under this trust, it had been recommended that the Masters and Wardens of the Skinners' Company should annually visit Tonbridge School. I do not happen to know how many wardens there were—two or three I believe. No doubt it would be a very useful thing that they should examine into the classical efficiency of the master and the scholars; but then, if they were to go to Tonbridge for this purpose, there must be some expense: What is the proper sum to allow for that purpose? The case that I allude to is the case of the Attorney-General *v.* the Skinners' Company. This your lordships will find in the second volume of Russell's Reports, page 407. In the new scheme which had been approved by the Master, and sanctioned by the Court, two hundred pounds a year had been allowed to the Company for their expenses in visiting the school:—and then the question arose, not a question whether two hundred pounds a year was too much,—that was not the question,—it was agreed that that was a fit sum; but the question was, out of what portion the two hundred pounds was to be paid; and the Lord Chancellor gives his judgment out of what it should be paid.

Now, therefore, your lordships see that for the simple purpose of visiting this school at Tonbridge, the Court of Chancery has thought fit to allow to the master and wardens 200*l.* per annum for each visitation. That has not been allowed as remuneration for their services as trustees,—they could not be remunerated; and it was so great a service that it was not to be appreciable in money, but that sum was allowed as the proper

expense. Now, how did the Master and the Court arrive at the conclusion that 200*l.* was the sum? There is some travelling—I think it is about 26 miles from London; and if they each separately had a coach and four to themselves, they might for travelling expenses manage to spend a tenth part of the money. It could not have been for travelling expenses, then, that the money went. For what purpose was it? Not for remuneration. There must have been some scale; and I cannot help thinking that the scale must have been upon considering that there would have been so much for going down, so much for coming up, and so much for some species or other of entertainment that was to be had there or elsewhere. I cannot doubt that this must have been on the plan of including a dinner; I will not say a cold collation,—that would not be sufficient; but something of this kind must have been included, or the sums could not have been made up.

Now, I ask this:—if the 200*l.* is a right sum to be paid to the master and wardens of the Skinners' Company for visiting the school at Tonbridge once a year; is it too much that the 26 gentlemen who have formed this body, who have repeatedly and continually to attend the Courts, and have various important duties to perform, that they should have in the course of one year expended a sum of about 800*l.*? If it be too much, what sum have the Skinners? They have 200*l.* for this annual visit to Tonbridge. If the members of our body have expended, in the whole management, only four times as much as the master and wardens have expended upon one visitation to Tonbridge, it cannot be thought that that is unreasonable.

With respect to the rest of the expenditure, your lordships have heard of the enormous amount spent in the management. You will find that that has been over-estimated. There is about 2,000*l.* or 3,000*l.* in two years for building the Irish Chambers, the house in which they meet, and in which the records are kept; and there are also included in that some heavy law-suits which they had about that time about advowsons; and they had a law-suit about their fisheries. Now then, my Lords, the expenses of management, my learned friend says, are very enormous. I do not know, my Lords, but it is

possible that, putting down the salaries of the officers, and every thing together, they would amount to something more than would be expended if the same estate were in the hands of a foreign Irish absentee landlord; and he instructed his agent there, and employed an Irish attorney to make the most of it, and pressed the tenants to the utmost,—he might make more of it than we do; but then, if it be an error in corporate bodies to be somewhat more liberal than others, I believe it is a common error in corporate bodies; and I rather think that your lordships cannot well judge of this question by any comparison between the expenditure of this property, and those other properties with which your lordships are acquainted. The way to do it is, to compare it with the expenses of management of some other City Company. Let us see another City Company, with property of equal amount and of equal complication, and let us see whether the expenses do not amount to as much as in this case. If ever the time should arrive when we shall have the opportunity of seeing a printed account of the expenditure of the Skinners' Company, distinguishing how much they pay to clerks, how much to dinners, how much to charity, we shall be able to judge of the propriety of the conduct of those who from time to time have the management of this property. We shall then see how much it is that those Companies find it necessary to expend in the management, in salaries, and so forth, and how much remains for the ultimate disposal of the Company. I do not think that upon those heads your lordships will come to any conclusion further than this, that they have done that which has been usual for 150 years. As large an expenditure as ever was incurred in this Society, was the dinner that they gave to the Duke of Ormond.

With respect to the other matters alleged against this Society, I think they have been all answered. One gross breach of trust was alleged against them,—their having agreed to grant a ferry to the corporation of Londonderry upon a perpetual lease. They did that about the year 1789, and they did that in the exercise of their discretionary power, of applying the property committed to their care to the local improvements of

the place. They were possessed of the ferry over the river at Londonderry; the corporation at Londonderry proposed, for the benefit of the public, to build a bridge instead of the ferry; when it was built, there would be an end of the ferry. At the same time, the owner of the ferry would have a right to set up his rights against the person who built the bridge, and the Society, therefore, agreed to grant that ferry which belonged to them, at the rent of 20*l.* a year, to the corporation of Londonderry, in order to enable them to make that bridge for the furtherance of one of the public objects, and for which they are here arraigned.

My Lords, what is stated here as one of the gravest, and as the head and front of their offending,—what excited my learned friends to the utmost indignation, was the circumstance of their assisting in the election petition presented in the year 1830, as it turns out. That seemed to excite a great deal of indignation. My learned friends should have recollected, and might have stated, that that very act was one which, whether it was right or not, the new body that came to the office in the year 1831 did not think fit to continue. Whether it was right or wrong,—no doubt it was right of them to assist the inhabitants of Coleraine in asserting their chartered rights,—they were appointed to be the conservators of that corporation, and of the corporation of Londonderry; and it was right for them to do that. It is another question whether they were right in the particular mode of doing it, by paying the expenses of an election petition. I think that that may be very well doubted. I think that the object of preserving the corporate rights of those persons was a subject right for them to pursue; but I think they ought not to have done it in the way of presenting the election petition. But whether right or wrong, it was done by the delegates of the twelve Companies, it was done by those who then represented the Companies, and instructions for the petition were given. The petition was presented on the 15th of October 1830. Fifteen days afterwards they wrote a circular to the Companies. In February 1831 they went out of office.

Now, my Lords, this is the conduct, if one wanted

evidence of conduct, which has been followed on the part of those persons. The objects for which those suits proceed is plain enough. There are some of the leading members of the Companies, who have most influence among them, who, according to the old custom, would have come into the Society, and those persons have been piqued at losing their election, and those persons have therefore now endeavoured to make use of the names and seals of the Companies of which they are members of the court of assistants, for the purpose of raising up this suit—for the purpose of gratifying their pique. The thing is too plain to admit of doubt. It is plain and obvious upon the dates; and it is one question whether this suit is right, and another what is to be said upon the conduct of those persons who, for their private ends, have been employing the funds of those Companies that were committed to them, not for the purpose of dinners, or to carry on the pique of certain individual members who have the control,—but with purposes like these they have come forward here, setting forth the alleged rights of those Companies, founded in the manner that your lordships have heard; and we say that the new regulation made a few years ago by the Irish Society have made them feel that it was an imperative duty upon them to come forward. Your lordships will observe the dates. In the year 1832 the last of those members go out of the Society, and in that same period the resolution passed for publishing their accounts, and against granting perpetuity. At or about the same time a resolution is formed not to continue the expenses that had been begun in reference to elections. In July 1832 the bill is filed, under pretence that the Society ought to be called to account because they are spending money in elections, because they are granting perpetuities, and because their accounts are not published.

My Lords, this is the last contest of this description that may be brought before the Court between the exclusively self-elected Corporations, and between those bodies that do represent the real interests of the inhabitants of the places to which they belong. It is one which I think has been carried on in a manner that cannot but excite a good deal of disapprobation on

the part of the Court. I think it is impossible that the acts of these parties, and the mode in which they have brought forward this case, can in any way meet your lordships' approbation. Your lordships will attend to the dates in which this application was made. The bill was filed as long ago as the month of July 1832: it is now represented to the Court,—and I say represented as an idle pretence, with as much of sincerity as the other statements that have been made in this application,—that on account of the conduct of the Irish Society in the mismanagement of these funds, they are obliged to come to the Court—so great is the danger of leaving the funds in their hands: but, if so, upon what ground has it not happened before? April 1835 is the date of the notice of motion. The bill was filed in July 1832, and the whole substance of the case being answered in the month of January 1833, very little has been added to the pleadings since that time,—nothing since that notice of motion. I do not know whether any other circumstances have prompted them to give notice of motion at this particular time,—whether there were reasons that made them doubt that they could wait till the hearing of the cause,—whether greater and more extensive changes might not intervene, which would prevent them from making this motion; but, if it was so, that is not a reason which the Court will attend to. This application may be made with reference to other matters. The Court will look at this application upon its merits, and see that it is unfounded in principle or in precedent, and that it is made under such circumstances as to bring it before the Court with every thing which can excite disapprobation.

*[Adjourned.]*



*Tuesday, 16th February, 1836.*

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Mr. WOOD.—My Lords, I appear with Mr. Knight and Mr. Jacob, on behalf of the Irish Society; and I also appear for Mr. Henry Schultes,\* the Secretary of the Irish Society, whom the parties on the other side have thought fit to serve with notice, and who therefore appears by me. I only mention his name.

Mr. WIGRAM.—You must produce your affidavit of service on Mr. Schultes.

Mr. WOOD.—We have got the original notice.

Mr. WIGRAM.—We deny the service.

Mr. WOOD.—All I should say with regard to Mr. Schultes is, that the plaintiffs have made him, as they had a right to do, a party, for the purpose of having an Answer on oath as to all the facts inquired after by their Bill; and I think it right to inform the Court (as my learned friend, Mr. Knight, read the Answer of the Irish Society, which is under their corporate seal, not on oath,) that every one of the statements in that Answer, so far as the same can be corroborated by the personal knowledge of any individuals connected with the Society—every one of those statements is repeated in the Answers of the Governor and the Secretary, and by them repeated on oath. They cannot of course speak to all the various facts which took place during the course of two centuries—the malfeasances, and the dinners, and so on, two centuries ago, from their personal knowledge; but even as to those they speak to their personal

\* Mr. Schultes was Secretary up to April 20, 1833, when he resigned.



belief, particularly from the knowledge of the Secretary—the person most conversant with the affairs of the Society—the person who compiled this book, called “A Concise View.” I think this explanation is not altogether unnecessary; for I recollect, that when my learned friend, Mr. Knight, used the word “sworn,” Mr. Wigram said, “You mean stated.” I therefore simply mention the circumstance, that every one of these facts, as far as they can be deposed to, has been deposed to on oath.

Appearing for the defendants, the Irish Society, I greatly regret that it is necessary for me to address your lordships at all. If my learned friends on the other side had given to the Court a distinct and explicit statement of the case, I really believe your lordships would not have felt it necessary to hear more than one speech, instead of hearing eleven, which you will now be called upon to hear; but the case has been opened in such a manner, that we are put into this unpleasant situation—we are at a loss to divine what is the nature of the case on which my learned friends intend to rely; and we are therefore obliged to meet by anticipation any objection which can be made when my learned friend comes to reply. When I consider the substantial part of the case, it appears to have been not only made out by sundry omissions of facts, which are material, but to have been also supported by sundry statements not borne out by any of the evidence in the case, namely, the Answers and the Documents referred to by them. It has been supported by statements not only not established in evidence, but actually in contradiction in many respects to that evidence as it stands, and as it has been now exhibited before your lordships. Your lordships will be quite aware how this has happened: it has arisen from the necessity which has been felt by my learned friends of placing their case in such a position as that it may receive the attention of the Court; and I think it material, in regard to the manner in which this case comes before your lordships, to remark, that with all the zeal, talent, industry, and learning, employed on the other side, it has been thought necessary to present to the Court in the first instance that which must now appear, I think, in the result, to be a

**fictitious case.** If that be so, I only ask your lordships what opinion must be formed of the real nature of that case which required to be supported in such a manner, and which it has been thought fit to be brought before the Court in such a manner. I have not made any of these statements at random. I have taken the trouble to examine some of those allegations and statements which have been made to your lordships; and the manner in which their case is actually contradicted by the evidence; and I think I shall be able to show your lordships that the case thus presented has really put us into the position of not being able to deal with the merits on which, if they have any, the plaintiffs mean ultimately to rely.

My Lords, in the first place, looking at the prayer of the Bill on which the parties must now found their motion for a Receiver, they state their claim generally as being entitled absolutely to these funds, over which they seek to appoint a receiver. It is true that in a part of that prayer they state, "subject to such charges, if any, as may be now existing;" but when they state that, your lordships will also bear in mind that they deny by their bill that there are any such charges, with the exception of 200*l.* to the Governor of Culmore, and a certain payment to the Bishop of Derry; and there is a positive averment in their bill that the estates are not subject to any other charitable use or trust whatsoever: that is the plain statement of their bill, and it is that which they have undertaken to make out,—for had they intended to admit that there was any important trust existing, of course it would have been impossible for them to have made this application without having made the Attorney-General of England or the Attorney-General of Ireland a party. They are bound to make out that these estates were vested in us as mere trustees for them, subject of course to these particular charges for the Fort of Culmore, and the Bishop of Derry. If they had made out that, it would have been unnecessary for them to seek to make out the charge of breach of trust; if they had made out that, there would have been nothing to do but to hand over those funds to the Company;—it would have been simply a case of *cestui-que* trust, seeking to obtain from the trustee the possession of

the Court to the manner in which he stated the monies to have been produced, which is the gist of the whole question now before the Court. My learned friend stated that a conference was held between the Mayor and Deputies of the Companies and the Privy Council. Your lordships will find that a conference was held by the Mayor and certain committees of the Court of Common Council, to confer with the Privy Council of Ireland upon the subject; and this appears by the first Act, I think, of Common Council set out in the Answer, that of the 1st of August, 1609, by which it is recited that certain committees appointed by "that Court" waited upon the Privy Council; and this relates to the first interview between any parties on behalf of the City of London and the Privy Council in relation to this transaction. It appears, as my learned friend, Mr. Jacob, observed, that there was originally a precept sent to the Companies to require certain persons to meet, and to see whether they could get their Company together to subscribe; but that appears to have failed. It is stated in the original Bill that the first precept required the Companies to cause their members to come together to consider the proposals; then it is recited that they sent persons who had not full powers; and then, by a second precept, they were summoned to appear at their peril; and then again they are summoned, on pain of being fined for their contempt. When the first precept had failed, from that moment the Companies are never heard of;—there is not the least pretence for saying, on the whole of these documents, that the Companies ever again were heard of as parties consulted or treated with, or dealt with in any other than a compulsory manner. But that did not suit the view my learned friends on the other side were inclined to take; and accordingly my learned friend, Sir William Follett, states that the Mayor and Deputies from the Companies waited on the Privy Council. Again, he does not state correctly the origin of the Irish Society, which was founded by the Common Council, and the Common Council alone. I have a reference to the short-hand writer's notes; he states, "The proposal to form that Society did not come from the Crown, but from the surveyors of the

City Companies." Now, how is that? There were four viewers sent to view this colony: by whom were they sent? They are called by my friend surveyors of the City Companies. They were never sent by the Companies; there is no pretence for saying that they were. Your lordships will find that they were sent by an Act of the Common Council. I will not trouble your lordships with reading all those Acts of Common Council again; but that is the fact. Again, though perhaps it is not very material, I observe one of those viewers was not even a member of one of the twelve Companies, but a painter stainer. A great deal has been said of the twelve principal Companies, yet one of those sent as viewer was not a member of any one of those twelve principal Companies. The viewers came back and made a report, and upon that report a committee was appointed to consider of the best mode of carrying into effect the arrangement with the king. That committee proposed the establishment of the Irish Society in the manner your lordships have heard; the committee was not appointed by the Companies, but by the City, whose authority your lordships will find exercised throughout in the course of this transaction; and therefore the second representation I complain of is, of this being represented as having emanated from the City Companies.

Then Sir William Follett says, that the Society was constituted out of persons selected by the twelve Companies of London. Now certainly a more inaccurate representation of the fact cannot be conceived; there is not the slightest pretence for saying that the parties were selected by the twelve Companies of London; they were selected by the Court of Common Council, that Court consisting of members of every Company in London, and consisting of persons who need not necessarily be members of any of those Companies at all. Then my learned friend, Sir William Follett, states the articles of agreement between the City of London and the Crown. I could hardly see whether he intended your lordships to consider what he stated as virtually the agreement, or as part of his speech, but he alleged that the articles were made between the king and certain persons representing those who advanced the

money ;—it was, I believe, a part of his speech, but that was the way in which it was introduced to your lordships' attention. There is no pretence for saying that these persons did represent the Companies. Then Sir William Follett read the articles of agreement, omitting those relating to the Vice-Admiralty and the Customs ; and then he read a statement out of the " Concise View," but stopped, very curiously, at the part which describes the powers of the Society—a very material point, as bearing upon this case, his object being to represent them as mere conduit-pipes or trustees ; and he felt that mere conduit pipes or trustees cannot have any authority over the estate of their *cestuique* trust. Then there was another very curious representation as to the mode in which the money was raised—I have the expression. He says, " I forgot to state the manner in which the Companies raised this money, and that is, the Companies pointed out that it should be raised by a general rate ; and that was agreed to." Can any thing be more entirely at variance from that statement than the account of the transaction set out in the Answer, and in all the documents referred to in the Answer ? Your lordships find that the Court of Common Council directed the raising of this money ; they taxed the Companies, although it was intended, if the attempt should succeed, to do something by way of repayment ; and they determined that the minor Companies should be " spared," that was the expression,—an expression very singular in regard to a voluntary gift ; and that was felt by my learned friend Mr. Lloyd, for he let slip the word " burthened," or " rather" (he added,) " it was a voluntary contribution," which struck me at the time as showing how he was embarrassed by a word which caught his eye, but which he did not read.

MR. LLOYD.—Yes ; I did indeed.

MR. WOOD.—No ; not about the minor Companies being " spared,"—that was carefully kept back. These are the material points in which, as I stated to your lordships, the opening of this case differs upon one of the most material circumstances of the case as it now stands before your lordships, namely, the advancing the money. Listening only to these statements of my learned friends, without any thing to assist your lordships

in the elucidation of them, it would be impossible to arrive at any other conclusion than that the whole of these transactions were on behalf of the Companies;—that they advanced the money, and that merely the name of the City was used, for what purpose no one can conceive; perhaps for the purpose of giving a lustre to the transaction. But your lordships will not be led to suppose that the money was advanced by the Companies, and that all the propositions made regarding the government of the plantation, and every other transaction with regard to it, arose from the suggestion of the Companies, or that all was voluntarily done by them on the mere statement of my learned friends?

I shall be exceedingly brief upon the question—what was the real state of the case? It appears, in fact, that this application was made by King James to the City of London, and to the City of London alone. The Crown has never, from the beginning to the end, dealt with any other parties than the City of London, and the Society appointed by and emanating from the City of London; the Crown dealt with them, and desired them to undertake this plantation, and I dare say some degree of force, such as frequently attended matters of this kind in those days, was used. The City of London then apply, in the first instance, to know whether the Companies will voluntarily come forward to assist in the matter. The Companies do not intrust any persons with sufficient powers, and then the City commence a compulsory process. They first sent out their precepts, ordering the Companies to bring their principal members together, and then they sent out viewers: three or four hundred pounds were expended in sending over viewers; that expense they paid out of the Corporation chest, by their chamberlain. They then considered the best mode of raising the money. A Committee of the Common Council report (and they adopt that report,) that it will be the best way to raise it by a corn tax, the Companies to pay by the poll. Now, supposing that tax to be levied on the Companies out of their own goods and chattels—supposing there existed goods in the hands of the Companies to be taken for the purposes of this plantation, can it be said that monies raised in this manner create a resulting

trust, when you see that it is not money voluntarily raised by the Companies themselves; are not you under the necessity of inquiring what has been the nature of the authority exercised by the City over the Companies, and the usage between them; and whether the City, having power to tax, had not the incidental power of directing how the money should be applied? and then does not that leave us to the question of usage? and do we not come at once to the transactions of the last two centuries, instead of trying the question of a resulting trust? But it does not rest here; for these are not monies advanced by the Companies, though Sir William Follett threw out an observation that the Companies had property distinct from the Corporation of London: it was money raised by a tax on the Companies by the poll, each individual in the Companies being called on to contribute to that tax; and if that be a resulting trust, if we are to go into that, it must be a resulting trust for the representatives, wherever they can be found of those parties thus taxed by the poll. This is at once conclusive against any question of resulting trust, and leaves us at once to the question of usage. My learned friend Mr. Lloyd says, it is clear, if the money was raised by a corn tax, the application of the money must be the same as that of the corn tax, and that that money was always considered as held in trust for the Companies,—that is to say, that the City considered themselves trustees of the money which they raised by contribution from the Companies who collected it. But this appears very much at variance with the principle of the *Haberdashers'* case, cited by Mr. Knight, and which, I believe, was borne out by all the evidence in the case, though that evidence is not reported. The *Haberdashers* (being one of those twelve Companies,) stated by their Answer, “ that in the year 1646, and for some time previously and subsequently thereto, it was the custom in the City of London to provide against scarcity by requiring each of the chartered Companies to keep in store a certain quantity of corn, which was to be renewed from time to time, and, when required for that purpose, to be produced in the market for sale at such times and prices, and in such quantities, as the Lord Mayor or the Court of Common Council should direct; that this custom

was a heavy burthen, and occasioned great expense and loss to the Companies, for that in seasons of scarcity precepts were issued by the Lord Mayor to the Companies, requiring them, under penalties, to provide and store up large quantities of corn, not for any purpose of charitable distribution, but in order to supply the demand by sale in the corn market; that upon such occasions the market price was fixed by the Lord Mayor, without regard to the sum which the corn had cost; that it was frequently necessary to exact large money contributions from the different Companies, and from the freemen and members thereof, in order to provide funds for the purchase of such corn." That, therefore, was the mode in which the City dealt with the corn; they conceived, when they raised a corn rate, that they had the power which they had been in the habit of exercising, of directing how that corn rate should be disposed of. Corn was first ordered to be bought, and when bought they immediately disposed of it according to the powers they possessed; they afterwards paid over any money which remained to the Companies. They, as a governing body, did not go the length of taxing the Companies beyond what the nature of the case required, but as far as the necessity extended they went. The present is a case standing in precisely a similar situation. The money is directed to be raised by a tax for a great and important public purpose—the planting of this colony, which had been represented as of great consequence for the protection of the Protestant religion in the north of Ireland, and which was also to be made beneficial to the trade of the City of London by giving them a variety of privileges to be confirmed by charter, such as the trading to that district as to a free port, for instance. The City, for the purpose of obtaining those advantages, thought fit to levy a tax on the Companies; and when they had so done, they did (as in other cases they were entitled to do,) dispose of the property purchased, as they had disposed of the corn, in the manner they thought most for the benefit of the City; and when the City, and afterwards the Society that emanated from the City, had done that which they considered fit and proper for the public benefit, with the contribution raised by poll in the Companies,



they handed over to the Companies the surplus, that is to say the monies, which remained, after providing for all such exigencies of the public service as the City of London thought requisite to be provided for when they raised the money. That appears to be the whole nature of the case. The City contracted with the king for this great public work, making themselves responsible to the king, (for they were the only parties so responsible—the king never looked to the Companies); they undertook to do it by means of such powers as were at that time of day vested in them; one of those was that of raising money through the Companies who were to be taxed; that is to say, they taxed the citizens belonging to the Companies for public emergencies and objects; and when those purposes were satisfied, and not before, they having jurisdiction over the funds, returned to the Companies such part as was not wanted for the purpose for which it had been raised.

Now, my Lords, is not that borne out by all the documents?—I say the City only is treated with. Are not the original articles of agreement between the King and the City alone? Is any one of the Companies named in them?—Not a single Company is named in these articles of agreement. We then come to the charter of James I. Are the Companies named in that?—Not one; they are not named in one single passage of that very voluminous document; the only new party who there appears upon the stage, is the Irish Society. Your lordships have heard how that Society was formed; the Corporation of London might think that all the Common Council were not the best form of a governing body, and they therefore formed a species of Committee to be elected biennially, (one-half being changed every year) to transact this important public business on behalf of the City; and the king acquiescing in that arrangement, as made by the City, with whom alone he was dealing, incorporates them by this charter; and to that body, and to that body alone, does he convey the whole of this important property with enlarged powers, which are the more remarkable when they come to be repeated at the interval of fifty years in the charter of Charles the Second. By the charter of James, the Society is empowered “to direct,

constitute, and ordain, as of the part of the Mayor, Commonalty, and Citizens of London,"—not of the Companies—"all and singular matters which should seem most profitable and expedient for and concerning the plantation, supply, establishment, continuation, and government of the aforesaid City of Londonderry, and all other lands and tenements thereafter mentioned to be granted; and also to send orders and directions from the kingdom of England unto the said kingdom of Ireland, by letters or otherwise, for the ordering, direction, and disposition of all and all manner of things and matters whatsoever, of or concerning the same plantation, disposition, or government of matters there, and also of the receiving, and ordering, disposing, and disbursement of all such sums of money then already collected or received, or thereafter to be collected or received, and generally for any other thing, cause, or matter whatsoever, which by the true intent of the now reciting charter may or ought by them to be done for the better government and regulation of the city and county of Londonderry." And in order still further to increase their power, the king grants to them, that the bye-laws made by the corporation of Derry should be sanctioned by the Society. All this would have been sufficient, even if it had not been repeated fifty years afterwards, it would undoubtedly be sufficient to answer my learned friend, Sir William Follett's, argument, that nothing permanent was intended. It is a most important circumstance, that a part of the directions given by charter implies that for the future this Society shall continually sanction all bye-laws thereafter to be made; and this too for the better continuance, as well as government of the plantation. Looking then to all those powers to which I have adverted, I ask if they be not utterly inconsistent with the notion of the Companies being the parties who alone advanced the money, and are alone entitled to any interest in the property.

But the case does not rest here,—it rests with a long continued series of documents. I will not fatigue your lordships by pointing out more than one of the most material. There was a license from the Crown to the Companies to take lands in mortmain;—that is the only occasion on which the Companies

are mentioned. They are mentioned in that license of mortmain; and it is there recited that they have expended certain sums of money in improvements, but the king does not there say that he will have any thing to do with the Companies—that he will treat with them. He had the more solid security of the City of London for the execution of the trusts created by his letters patent, and he does not say that the Companies shall have a right to demand a conveyance of any part of this property. But what does he say? He says, “that it shall be lawful for them to hold as much as the Irish Society may think proper to grant them;” that is the expression, and that is the expression to which my learned friend, Mr. Lloyd, led us, and then in a most singular manner stopped short; he stopped short at the mention of the lands they were to be enabled to take, which referred only to such lands as this Society should be willing to grant—that is the exact phrase. Is it not utterly inconsistent with the whole notion of trustees and *cestuique* trust that a *cestuique* trust shall take what the trustees shall be willing to grant? When that is once stated, the whole matter is quite intelligible. Who ever heard of any charter being granted to enable *cestuique* trusts to take what the trustees shall be willing to grant? It is clear that the Companies were not dissatisfied with this; but they take their grant under these letters patent—they hold the estates they do now hold under them. And what were the grants they took? Why they took a grant reserving to their trustees, as they call them, all the timber upon their estates, which may be said perhaps to be for the purposes mentioned in the charter. I will not lay much stress upon that—but again reserving all the minerals—reserving the power of hawking, and fowling, and so on—and above all, reserving a quit-rent—a rent in one instance of 21*l.*, a pretty considerable sum at that period, when we look at the whole expenditure of the Companies, which was only 3000*l.* for these purchases. My learned friends can never by any sophistry persuade your lordships that these parties are merely *cestuique* trusts; I appeal to the Court whether every single fact I have mentioned does not make out the case to be as I have represented it to your lordships.

I will pass (not to fatigue your lordships,) to the informations filed in the Star Chamber. How did the Crown treat the parties? They filed two informations before the Companies were made parties; afterwards they were made parties; but why? Because they had been made parties to conveyances of lands; and as the Crown were desirous of recovering all those lands, it was felt necessary by the crown lawyers to make the Companies parties to the suit. But when the judgment passed, upon whom did the penalty of the judgment press? Upon the Corporation of London. The Corporation of London were fined 70,000*l*.—not the Companies, but the Corporation alone; the Companies were directed to give up the lands they possessed, but the Corporation of London were considered the responsible persons, to whom alone the Crown looked; and the City was fined that enormous sum. Negotiations afterwards took place, and a petition was presented to the House of Commons, about which something was said by my learned friends on the other side. The City, smarting under this fine, are stated to have made allegations that they were only trustees for the Companies. I shall have to deal with this more fully presently. I have not been able till lately to find out where the decision of the House of Commons is to be met with; but at length I have found it reported in the third volume of Rushworth's Collections, page 1053,—he gives the resolutions of the House of Commons on the case of Londonderry. He states that the case in the Star Chamber took seventeen days' hearing, but that he was out of town, and is not able therefore to give a report, except of what took place before the House of Commons. It appears to have been argued at some length before the House. He states that the king was present. I do not know how that appears.

Mr. LLOYD.—It appears in the documents.

Mr. WOOD.—I do not know how far that is consistent with what has been before said of the great breach between the King and the House, but it is remarkable that the Companies are barely named in the resolution of the House, and that not in a way to show that they were considered as having any interest even in the lands actually conveyed to them, but

rather as showing that they were something subordinate to the City in the holding of them. There is a long series of reasoning; and then it is resolved, first,—“That the opinion of the House is, that the Citizens of London were solicited and pressed to the undertaking of the plantation of Londonderry.” It was also resolved, “That the order made in the Court of Star Chamber, dated 8 Martis, 8 Car. is unlawful, both for the matter, persons, and times, therein prefixed. Resolved, That this House is of opinion that the King was not deceived in the grant which he made unto the Society of the Governor and Assistants of London, of the new plantation in Ulster, of the kingdom of Ireland, in particular, not in creating a new Corporation called the “Society of the Governor and Assistants of London of the New Plantation in Ulster;” but no mention is made there of Companies.—“That the House is of opinion that the King did not by that patent grant more land than was by him intended to be granted, nor was therein deceived. That it doth not appear, by sufficient proof, that the Citizens of London were tied to perform the printed articles, and consequently not bound to plant with English or Scots, nor restrained from planting with natives. By the 27th article, the City was to build 200 houses in Derry and 100 in Coleraine by the first day of November, 1611. Admitting that the houses were not built, nor the Castle of Culmore repaired by the time prefixed, yet this is no crime nor cause for giving damages; in regard the City had not their patent until the 29th of March, 1613.” Now here is the only mention of any other Companies,—“That there is no proof that the Governor, &c. of the new plantation, or any of their Companies, did make any lease unto any Popish recusant, nor of any decay of religion there, by default of the planters.”

Mr. LLOYD.—That is not an exact copy of the documents.

Mr. WOOD.—Rushworth is a book of very considerable authority; I have taken it from that alone.

Mr. WIGRAM.—It is not consistent with the document which came out of your own depository, which gives your own account of the matter.

Mr. WOOD.—I certainly never heard of it. I was desirous

of knowing what had been done by the House of Commons: whether they had resolved that we were merely trustees, whether they had come to that opinion which it was stated was averred in the petition. This is the only account I have seen of it, and there is no other mention of any of the Companies.

Mr. LLOYD.—It is not so indeed.

Mr. WOOD.—That is the state in which I have found it; and whatever may have been the statement in the papers, my learned friend will not be able to find any thing which shows that the House of Commons apprehended that they could treat the City as mere trustees, or that if a profit resulted, that was to be held in trust for the Companies. Here are various expressions importing a continuance. The expression “decrease of religion” is of some importance, as showing that they considered that the continuance of religion was the object desired—that there was to be no decrease of it as established under charter.

Mr. LLOYD.—This is the document.

Mr. WOOD.—I do not know where that comes from.

Mr. LLOYD.—That is from the depositories of the City.

Mr. WOOD.—It is a little different—it is “the Companies,” not “their Companies;” but the only way in which the Companies are mentioned is, that they had not made certain leases of land; and not one word here shows that the House of Commons took the view which my learned friends say was taken by the City, (who appear to have been very anxious to get rid of this fine of 70,000*l.* by any means,) namely, that they are merely trustees. The resolutions are, that there has been no breach between them (the City) and the King, of the conditions on which they held this property. Such were the resolutions after, as it appears, legal argument. There is nothing, therefore, showing that they entertained a notion of the City being such trustees as they are now stated to be.

Then, my lords, what was the fact? The City were to feel the punishment of any alleged breach of trust—that appears to be the fact by a document my learned friend, Mr. Lloyd, read of the 6th May, 1650, which I had not before seen. It appears, by the recitals of what had taken place previous to the judg-

ment of the Star Chamber, the City paid in the way of composition to the King the sum of 12,000*l*.

Mr. LLOYD.—There were other matters.

Mr. WOOD.—But the sum of 12,000*l*. is stated to have been paid by the City as a sort of compromise between the King and the City: the City, therefore, were the parties, substantially as well as in form, who alone were treated by the Crown as those with whom the Crown had dealt.

Then after that there was a Charter, granted by Oliver Cromwell, some time after the original Charter, some time after the temporary purposes had been answered to which my learned friend, Sir William Follett, has adverted; and then conveyances were made, under a license to hold in mortmain. Then afterwards we come to something more legitimate—we have the Charter of Charles the Second, and that is the Charter under which we administer this property. I just ask your lordships how it is possible for my learned friends to reconcile this with their statement of our being only simple trustees, (subject to the two payments to the Governor of Culmore and the Bishop of Derry,) namely, that fifty years after the first charter a new charter is granted, in precisely the same form as the original, when the Towns of Coleraine and Londonderry had been built, and when all those purposes which, according to Sir William Follett, were to occupy only five or six years, had been answered. It is very odd that we should have this round-about conveyance by way of charter to mere trustees, and that, too, a long charter, giving full powers and authorities to this Society,—a long charter, incorporating with the powers to be given to them over these estates certain authorities to be exercised over the Corporations of Londonderry and Coleraine, with a recital in the charter, that it is to the intent that this new Society shall be formed and duly constituted with such powers as might be requisite for making ordinances and so on, not on behalf of the Companies, but of the City of London, and for the good order, continuance, and government of the Cities in Ireland. Is it possible for any person reading this, and knowing the fact, as admitted by my learned friend, Sir William Follett, that there is not one single word of trust

mentioned in the charter from beginning to end;—is it possible for any person to contend for a proposition so utterly unsubstantial as that all this was to be done; and yet the Society were to be mere trustees for the Companies? They had no other funds but those as to which they are alleged to be mere trustees for the Companies. How were they to exercise those trusts reposed in them by the Crown by that charter? It is evident that they would be under the necessity of paying officers, and of making visits to Ireland, in case they should be required, which in all probability would be required, to see that the bye-laws were ratified, and carried into execution; and they are told by the words of the charter, that it was for those purposes they were constituted. Yet we are told, notwithstanding all that, there remained nothing more to be done by this Society. I ask whether this is consistent with common sense. Having stated to your lordship that there is not the least mention in the treaty between the Crown and the City of the Companies, I should add, that this is the first document in the nature of a grant which at all refers to the Companies, and it refers to them only in this way, in the recital: “And whereas the said Society of the Governor and Assistants of the New Plantation in Ulster, within the realm of Ireland, by virtue of a certain license from our said illustrious Grandfather, under the great Seal of England, bearing date at Westminster the thirtieth day of September, in the thirteenth year of his reign over England, France, and Ireland, and over Scotland the nine and fortieth, did grant unto the twelve chief Companies of our City of London (which had taken upon themselves the greater part of the burthen of the said plantation,) divers great quantities, parcels, and proportions of the said lands, tenements, and hereditaments, according to their several disbursements, and did retain in their own hands such part of the tenements and hereditaments as were not properly divisible for defraying of the charge of the general operation of the said plantation.” This, observe, is an admission by the Companies themselves, who have acquiesced under this new charter for two centuries; and who took a regrant of all the premises then vested in them, reserving the timber and the quarries, and all other



rights before reserved to the Society. The words, "for defraying of the charge of the general operation of the said plantation," show that the operation of the plantation itself is looked to in this charter, which is the charter under which the plantation has ever since been carried on, regard being had to the general objects of the grant, namely, the continuation of the Protestant religion, and the good government of the Colony. And yet with all this, we are to be told that the fund we have retained for such general operation is to be handed over to the Company, or that there is nothing more to be done than to pay the Governor of an old ruined fort 200*l.* a year.

The various objects for which the Society was formed have been gone through at very great length in the arguments which your lordships have previously heard; and they are contained at very great length in this book. There is scarcely a page in this book, from the beginning to the end, consistent with the view my learned friends have taken of the Society being a pure trustee, without any other powers than those which they allege.

When your lordships see, then, that this vast establishment is to be carried on, I ask, am I wrong in asserting that the statement of my learned friend, as to the mode in which the grant was made, and the Society was formed, (which he asserts to be at the request of the Companies,) is not utterly unfounded? This visionary fabric is demolished by a plain statement of facts. It did not require the ingenuity and abilities of my learned friends who preceded me to demolish this fabric. There is, however, much rubbish; and it was requisite to clear away this heap of rubbish, to show our ancient and substantial building in all its fair proportions—to show that which I believe your lordships will have seen, that the Crown had a great and important public purpose in view when it treated with the City of London—that it was not a matter of mere pecuniary speculation, which is the view my learned friends appear to have taken of it. They appear to have utterly forgotten the very first clause in the orders and conditions to be observed by the Undertakers, in which it is stated: "Forasmuch as many persons being ignorant of the

conditions whereupon his Majesty is pleased to grant the said lands, are importunate suitors for greater portions than they are able to plant, intending their private profit only, and not the advancement of the public service." My learned friends appear to have entirely forgotten that part of the declaration of his Majesty, that it was not for their private profit and convenience, but for the purpose of carrying into effect the objects stated in the preamble to the charter of James the First—the colonization of this large district, and the establishment and maintenance of the Protestant religion. That is not repeated in the charter of Charles the Second to Londonderry, but it is repeated in the charter to Coleraine. These were objects which my learned friends thought fit to omit entirely in their view of the case.

But they are not content with endeavouring to make out not merely their account of the mode in which the money has been paid, but they call in the assistance of subsequent usage, and in a mode which I think will appear not a little extraordinary. They endeavour to make out a case by which they consider the usage adopted by the parties since the confirmation of the charter as in their favour. Now if there be any one thing on which we can rely more strongly than another, it is the manner in which we have dealt with this property from the first; for if the Companies are not mentioned as parties dealing with the Crown, still less are they mentioned as parties interfering between the Irish Society and any third parties. There is not an instance of any lease granted, of any Act of Parliament required, of any public or official act done, in which the consent or approbation of the Companies was required. From the earliest times we have been in the habit of granting leases in perpetuity, and that is one of the complaints they make. We have, however, granted those leases. Has it ever occurred to any person,—and there are persons who have paid 35,000*l.* fine for their leases,—has it ever occurred to them to call for the concurrence of the Companies? Not the least—the Companies never concurred in a single lease; and wherever there was an Act of Parliament passed referring to this property, even down to the last session, was there any saving clause of

the rights of the Companies? Did the Bishop of Derry and others feel that they were not secure, according to my learned friend's view, in acting under those leases? We had no power (according to their view) under the charter to grant those leases; yet it never occurred to any lawyer who must have been employed in these important dealings for leases, or for Acts of Parliament—it never occurred to any human being that the acquiescence or the approbation of the Companies was necessary for any of the purposes for which they must have been required, if they had an interest as pure *cestuisque* trust.

But they have endeavoured to find out some little trifling instance of treaty with the Companies, as they call it, to point out some, what they call, admissions. There are various little facts of this kind which, in the course of two centuries, they have endeavoured to pick out from the documents. I will make but a single observation with regard to what are called admissions. I do not understand the term as applied here. I can understand what an admission is by a party against his own interest, and the party in the opposite interest has a right to say you have admitted something against your own interest; but when they state that we have admitted facts against our own interest, we answer, We do not claim any interest;—for after all that has been said about our extraordinary claims, we never have claimed to have one single farthing of this money for our own benefit, either as individuals composing the Corporation, or as the Corporation itself;—but we say, we are the parties entrusted by the public, and it is for the public we are to manage this. Then they state you have admitted you are trustees for us, and for us alone. Is that an admission against our interest? Suppose we had admitted it a thousand times over, are we in a worse position by such admission, as regards our individual interests, than if we were trustees for the public? I can see no difference whether we are trustees for the twelve Companies or the public, as regards ourselves. But we are now called in this very anomalous manner to protect the public, not having the Attorney-General of England or of Ireland to contend before

your lordships for the interest of the public ; yet having ourselves no personal interest either as a Corporation or as members of the Society. Such has been their argument as to admissions ; and I must say that it appears to me to be an argument in a circle. Take it for granted, as we admit it to be, that we have no separate interest of our own, and we have no interest as against which we can make admissions. We disavow any benefit in ourselves, and they assume that there is no interest in any third parties ; and then they proceed to read what they call admissions by us, but which the Attorney-General would tell us he has no concern with. If we were to admit ourselves ten thousand times over to be trustees for any parties, the Attorney-General would say, " I look to the whole series of these transactions under the last charter, and I will not permit you to admit the fact for a moment." That argument applies to the whole of the admissions. But when we talk of admissions, what are they ? Your Lordship sees that this Society is, as it is constituted, a fluctuating body, changing every year, the whole of the members changing in two years ; and such a Society having a little difficulty from time to time to know what their exact rights are, there are inconsistent statements, perhaps, put forward at different times. At one time they set up the right in themselves as having public objects delegated to them, and at another period they represent themselves as trustees for some private purpose or another. In the acts of the parties, as distinguished from mere statements, you will find a striking contrast.

But generally, as regards the admission of our trusteeship, your lordship will recollect what we say in our Answer—that after satisfying the public purposes, we have always handed over the surplus to the Companies. That is not exactly a trust, because the mode in which it originated was by the legislative acts of the Common Council ; but the practice has been to hand over the surplus to the Companies. Many of the alleged admissions will apply to the surplus ; and we therefore admit only what we are bound to admit, that as to that surplus we have handed it over to them from time to time. This will account for a number of the terms which occur in the docu-

ments that they have brought forward in this case. To select one instance as to the difference between the occasional statements of the Society, and other acts, namely, their conduct as to timber, there is a curious fluctuation in the accounts beginning at page 90 in the "Concise View." It is said, "The Committee made a full and explicit report relative to the preservation of timber, and the future growth thereof, anticipating great detriment to the Society's fishings and the welfare of the plantation unless the same were preserved; and stated, that forasmuch as the said Society did conceive and were advised, that by reason they had parted with their interest in the proportions passed away and conveyed by them, they had not power either to prevent the waste and destruction of the young woods growing on the lands belonging to each of the twelve Companies, or to call the persons to account for such waste committed, nor to plant on the said Companies' lands, or enforce the due execution of the act made for planting timber; and in regard that the interest and advantage which each Company would have and receive by and out of the profits of the fishery would be lessened and diminished, in proportion to the loss and damage happening to the said fishery for want of timber to supply the same with casks for packing the fish taken therein; as well as the Companies' tenants would suffer for want of timber for their necessary buildings and reparations. The Society therefore earnestly recommended the several matters mentioned in their statement to the consideration of each Company, that they might provide such timely and suitable remedies as in their discretions might seem fit and expedient." This was rather too good a point to be passed over by Sir William Follett, and therefore he stated that this showed that it was necessary for the Society to have the direction of the Companies as to the timber, and he stated it to your lordships (as being a little better borne out than some of the other statements) as an application by the Society to the Companies for their direction. But your lordships will see what the Society did when they came to consider their rights, and to execute a legal instrument; for by looking at that, your lordships will best be able to see what the rights of the parties were. In page 92,—“The

Vintners' and Cloth-workers' Companies sent an answer by their respective officers to the Society, to express their thanks for the statements sent them relative to the preservation of the growing timber, and acquainted the Society that those Companies were ready and willing to enter into any measures which should be thought most advisable by the Society." That does not look so much like the Society applying to the Companies for direction, but is rather as if the Companies were applying to them for direction. Then, in page 94, "a communication was made to the Grocers', Fishmongers', Goldsmiths', and Skinners' Companies, that the Society would meet to confer on matters relating to the woods, and requested their committees would attend and bring with them copies of leases relating to the woods on their proportions." Then after that there comes a legal instrument:—and when they are preparing a legal instrument, when the Society and Companies are all acting under legal advice, your lordships will see what the Society grants to the Companies, and what grant the Companies acquiesce in and take from the Society; and that is recorded in page 115. Now in that page there is a copy of the instrument by which the Society makes over the young timber that may grow for the future (in order to encourage the growth of the timber,) to the different Companies; and it is as follows:—"The Society of the Governor and Assistants of London of the new plantation in Ulster, within the realm of Ireland, being sensible not only of the great decay, but almost total consumption of the timber and woods formerly standing and growing on the several proportions of land belonging to the respective twelve chief Companies of London, &c., in Ireland; and that there hath been a very great and almost general neglect and disregard for many years past to the planting of young trees, either by the said Companies or their tenants, or other persons deriving from, or under them, for the raising and providing a further supply and stock of timber for the uses and occasions of the plantation; and having cause to believe that the chief hinderance and discouragement to the planting of young trees hath arisen and been occasioned by the said Companies, or their tenants, or other persons having, or claiming a right to

the said lands; being apprehensive that such young trees if planted, when they should grow to, and become timber, might be claimed by the said Society, and disposed of by them in such manner as they shall think fit, to the prejudice of those by whose care and labour such trees shall have been planted and preserved;—in order, therefore, to the removing such distrusts, apprehensions, or discouragements, and giving all possible encouragement to so useful and beneficial a work as the planting of trees on the said lands, which will manifestly conduce not only to the good of the plantation in particular, but to the benefit of the said kingdom in general:”—putting it, as your lordships observe, on grounds of public benefit, which it is now said are heard of for the first time in this suit, as well as to show the strict regard the Society have to justice and equity:—“and in pursuance of, and perfecting their said good intentions therein, conformably to a representation lately made by the said Society to the said Companies, and their several returns, testifying their consent and approval thereof, the said Society do hereby declare and agree that all young trees or saplings which have been planted within the space of fifteen years, and are now growing, or that shall hereafter be planted and grow on any of the said lands, or proportions of the said respective Companies, as aforesaid, shall not at any time or times hereafter be claimed by the said Society or their successors, either when the same shall be, or become timber, or otherwise, nor shall be disposed of by them to, or for the benefit of any of the estates or proportions of any other of the said Companies, their tenants, or other persons deriving or claiming any estate or interest under them; nor be taken or assigned by the Society to or for any other use or uses whatsoever; but the same shall and may, from time to time, and at all times hereafter, be cut down, had, and taken, by the said respective Companies and their several grantees or assigns, only so as the same be applied and disposed of, in the first place, for and towards the building and reparations, or other necessary use or uses, or their respective estates holden or derived from the said Society.” There is an expression about the consent of the Company, which your lordships will see was necessary, because each indi-

vidual Company had a right, in order to supply any deficiency in its proportion (if there should be such a deficiency) to have some of the timber of the other portions, and, therefore, it was necessary that all the Companies should concur; but throughout that document, notwithstanding all our admissions as to our applying to the Companies for directions, it clearly appears that we grant, and that the Company accept this timber, as being given by us, and that on public grounds alone—and from that time to this every lease that has been made by the Companies has contained covenants to the effect of this grant. I have here a deed, under seal, of the Skinners' Company, themselves assenting to the disposition of the timber, made upon those public grounds.

Mr. JACOB.—I will read it. “We the Masters and Fraternity of the Skinners' Company, taking the premises into our serious consideration, and being truly sensible of the good disposition of the Society towards this and the rest of the said Companies, and of their prudent and timely concern, as well for the interests of each in particular as the good and welfare of the plantation in general, do hereby readily and thankfully signify or assent to accept of what is so freely and kindly proposed and recommended to us in the said recommendation; and do agree that all and every of the said twelve Companies, and their assigns, as well as this Company, shall have and be entitled to the benefit of all young trees which are now planted, or shall hereafter be planted on their respective lands or proportions as aforesaid.”

Mr. JUSTICE BOSANQUET.—Is that the deed of 1741?

Mr. JACOB.—Yes, my Lord; it accepts the offer on the ground of its being so freely and kindly given, and for the benefit of the plantation in general: it is given to them, subject to the restriction that they shall apply it in the first place to the building of the plantation.

Mr. WOOD.—We have given my learned friends notice to produce a lease of 1742, covenanting that the Skinners' Company shall adhere to the regulations of the Society on those points. We have got a registered memorial of that lease extracted from the Irish register, and we have an affidavit of



service of notice,—whether my learned friends choose to produce it or not I do not know ;—but from this time forward all leases granted by the Companies have been leases of that description. I believe from the time of the letters patent that has been the case ; but it is immaterial, considering the numerous other instances of recognition.

Mr. JACOB.—It is a lease dated 1742, between the Skinners' Company and one Henry Carey ; and this book states that, in the leases which the Companies made to their tenants, they required their tenants to observe certain regulations ; and it will be material to see in what form those covenants are framed, and what it is that the Company have been in the habit of exacting from their tenants—how far they have required their tenants to yield obedience to the Irish Society in their regulations ; and we have given them notice to produce that one lease. We have not, of course, access to their repositories, but in Ireland there is a register, and from that we have got a copy of the lease granted by the Skinners' Company in 1742, which we tender.

Mr. WIGRAM.—We have no objection to it, supposing it to be a copy.

Mr. JACOB.—It is a memorial from the Irish registry in Ireland ; they have a full copy of the deed, it seems.

Mr. WOOD.—My learned friend will have the memorial itself when it comes. This is a lease from the Skinners' Company, dated 11th of January 1742, made between the Skinners' Company on the one part, and Henry Carey, Esq. on the other part ; and the covenants on the part of the lessee, among others, are these—“ And further, that he the said Henry Carey, his heirs or assigns, shall not, nor will voluntarily nor willingly suffer the same to come to the hands or possession of any person or persons whatsoever born, or to be born within his Majesty's realm of Great Britain, or the children of English or Scottish parents born within the said realm of Ireland, that shall refuse to take the oaths to the government which now are, or hereafter shall or may be appointed or required by Parliament to be taken by the subjects of Ireland.”

Mr. JACOB.—One of the covenants is this: “ That he the said

Henry Carey, his heirs and assigns, shall and will from time to time, and at all times during this demise, observe, perform, and keep all and singular the rules, orders, ordinances, and directions, made, given, or prescribed, or which shall at any time or times hereafter be made, given, or prescribed, in or by any acts of parliament, letters patent, or acts and regulations of the Society, of the Governor and Assistants of London, of the new plantation in Ulster, within the realm of Ireland, or their predecessors or successors, and also all covenants, articles, and agreements, which have been entered into by the said Master and Wardens, or their predecessors ;"—that is the Master and Wardens of the Skinners',—"or the said Governor and Assistants, or their predecessors, or any person or persons that have or hath undertaken on the behalf of the said Master and Wardens, or Governor and Assistants, or their respective predecessors, or on the part and behalf of the Mayor, Commonalty, or Citizens of London, for or concerning the building, or maintaining any houses or buildings, or planting or preserving trees upon, or sowing, managing, or improving the said demised premises, or any part thereof, or the securing or planting thereon." It covenants—"that the tenant shall observe all rules, &c., made by any acts of parliament, letters patent, or acts and regulations of the said Society, of the Governor and Assistants of the new plantation,"—that is by the Irish Society,—“or their predecessors, or successors ;” and this appears to be a renewal of the former lease made in 1742, upon the surrender of a previous lease, dated in 1696 ; and where leases are renewed in that way, it is common to put in the old covenants, and probably those covenants are copied from a lease in 1696, and that is probably copied from an older lease ; but there it stands.

Mr. Wood.—Now I ask after what has appeared, and after the plaintiffs have thought proper to require such a covenant as that in 1742, whether I have over-stated my case in saying that the whole matter has been brought in the most extraordinary manner before your lordships, when at the very opening it was stated that the public purposes were to terminate in five, or six, or seven years, and that all these purposes were answered, and that we had been converted into mere dry trustees ; and

yet we find in 1742 these parties requiring of one of their lessees a covenant that he should obey all the ordinances made by us?

LORD CHANCELLOR.—Is that stated in the Answer?

Mr. JACOB.—No, my Lord; we have it from the Irish Society since.

Mr. WIGRAM.—I do not mean to object, because it is not in the Answer.

Mr. WOOD.—When they have, my Lord, talked of admissions of one kind or another, which, as against the public, are entirely absurd, what can your lordships think of the series of documents in this book? And looking at this document just read, of about the same date as that of the grant of timber, we find they admit the public purposes to be then existing. Throughout the whole transaction they allow us to deal with the property as we have done, which is clearly such an acquiescence, especially as applying to the motion for a receiver, that no admission they can produce will countervail it. Alleged admissions against the public, made by a fluctuating body, who at one time perhaps (as in the case of timber) think that they have no right; and then afterwards, when they execute a solemn legal instrument, discover that they have a right.

Then, my Lord, they bring an admission in an Answer in Chancery, and in cases stated to counsel. One knows sometimes with what object cases may be stated to counsel. It was, perhaps, thought desirable at times not to construe the powers of this body, as it is contended that they should be now construed; for your lordships must observe the mode in which this Society was constituted, namely, by parties forming a deputation, as it were, from the twelve Companies; and when we look at that, we may conceive that there may have been times and seasons when they may have thought right to lay statements of the sort before counsel. But if the public are bound by statements of third parties, yet I apprehend that such statements cannot come before your lordships under the term of admissions. They have referred to several cases of counsel; but they have not referred to the opinion of one gentleman, whose loss we have had recently occasion to

deplore, but which would have thrown a great light upon the case. They have thought fit in a general way to produce to your lordships a great number of cases and a great number of opinions, but they have not produced that opinion.

Mr. WIGRAM.—What statement is it?

Mr. WOOD.—An opinion of Mr. Bell; it was in our chest, but that corner was not looked into.

There was one observation, my Lords, rather singular and amusing, of Mr. Wigram, with regard to the doubts the Society entertained of what their authorities were. “We find,” he said, “a doubt in the Society whether they can apply money to general charitable purposes.” It may perhaps be singular that a doubt should be entertained upon the subject, after they had been in the habit of making charitable donations for a century; but we must remember that this was a fluctuating body. The body that existed at any one time, not having the benefit of the knowledge of their predecessors, might not have in their view all that had been done by them; but supposing my learned friend’s clients to be pure *cestuisque* trust, how could mere trustees entertain a doubt whether they could apply the money of their *cestuisque* trust to general charitable purposes? The mere circumstance that they would entertain any notion of so doing is utterly inconsistent with their being mere conduit-pipes, as my learned friend, Mr. Lloyd, termed them, notwithstanding all the elaborate machinery of the charters, by which they were only to be converted into conduit-pipes. Then, my Lords, look at the whole series of expenditure, omitting as to that point the alleged breaches of trust; but looking to their expenditure upon schools, and their building of churches, and their giving a sum for bridges, and their making of roads;—for though these latter purposes, it is said, might be beneficial to the estate, what will my learned friends say to the applying of money to the education of children, or the building of churches?—objects perfectly consistent with the original charter, as we contend; perfectly consistent with the purpose for which the Society was founded, the maintenance of the Protestant religion; and without which the Protestant religion would never have been kept up; but which

it is impossible for any human being to conceive would have entered into the mind of a dry, naked trustee.) Then, again, with regard to the lands which they held, which my learned friends say were held because they were not conveniently divisible, I would ask your lordships to look at the charter. I ask your lordships, what inconvenience there would be in the dividing of the town lands? It was just as convenient to give them the town lands as any other lands which they could hold; but one can understand how it was that they were reserved: they adjoined the towns of Derry and Coleraine, and the Society retained part of them, and applied a part to different public uses, never asking the Companies for their authority; and in that way alone is it that the Society now holds those town lands.

Thus, I think, I have disposed of that part of their case as to admissions. They will not countervail the usage; and if there be any thing upon which the plaintiffs can take their stand, it must be the usage. I will not here forget to re-urge a conclusive argument, as the title of the plaintiffs resting upon usage, namely, the partition of the estates into twelve parts. How are your lordships to explain this, that they were divided into twelve parts? Here are forty-four Companies (even supposing the money to be advanced by the Companies), who are tenants in common of this property; and yet they tell your lordships that it is to be divided into twelve parts. Why not into three, two, or one? But, my Lords, if they had had recourse to that which they will never have recourse to, if they can help it,—I mean to our Answer,—that states that it was by an order of Common Council as to this property, that it was divided into twelve parts. Now this was rather arbitrary. All the Companies had reason to complain, supposing they had any rights, of that right being under the control of another Company; and some of the greater Companies would have still greater reason to complain, because they advanced, the Grocers', for instance, four thousand and odd pounds; and yet they did not have property given to them to the amount of four thousand and odd pounds, but only to the amount of three thousand and odd pounds; and they were left to get the

residue of their share by being tacked on to some of the greater Companies:—that was inconsistent with any arrangement to be made between trustees and *cestuisque* trust. Then your lordships will look at the very mode in which the City appear before your lordships as owners of the shares of the Brown Bakers' and another Company. The City issued an order that all parties should continue to contribute, or that they should forfeit their shares, and that the City should take it off their hands; and they afterwards declared the money to be forfeited, because those parties did not go on with the work. Nothing could be more arbitrary. There was, as regards this, another curious omission of my friend, Mr. Lloyd, which I will refer to. He told your lordships, that, when the division took place, the Companies were asked by the Common Council whether they would take land, or whether they would take money; and then he took care to read to your lordships what is in folio 81 of the office copy of the Bill—"And that they were told, that, notwithstanding the acceptance of the land, they would be partakers of all benefits of fishing, with the profits of the towns and other communities whatsoever, as by said notice, when produced, will appear." But he forgot to read to your lordships the part just before it—"That notice was hereby given to the Companies that they would have to bear and pay their proportions of the charge of the plantation in Ulster, whether they accepted the said offer of the lands or not." My learned friend informed your lordships that they were to have the benefit of the surplus, if there was any surplus. It runs thus—that if they were to take the land, they were to bear "their proportions of the charge of said plantation in Ulster, whether they accepted the said offer of the lands or no; and that, notwithstanding the acceptance of said lands, they would be partakers of all benefit of fishing, with the profits of the towns and other communities." The latter is the part which I said my learned friend read; but he omitted to read, that if they took it, they were to bear the burden of the plantation.

In every view of the case, then, there is no pretence whatever for a resulting trust, upon the ground of the money being

advanced by the Companies; and there is no ground whatever upon the usage, which, if taken at all, must be taken upon the whole bearings of the case, and upon the whole series of documents. There is no reason upon these grounds for saying that we are, in any shape, mere trustees for these Companies. The only shadow of a foundation which I can conceive they can set up in reply, (for that is one of the difficulties we are put to from not knowing what the reply will be,) when I suppose the substantial case is to be brought forward, is that of which there was a lurking hint in the Bill and in the opening speech of Sir William Follett. I conceive that there is a possibility of their stating that the Common Council, in fact, though it ordered all these matters, ordered them as the representative of the Companies. I suppose they mean to say—"The Common Council were our deputies, and acted for us throughout as our representatives in the transaction." That argument would, my Lords, be a little singular; because my learned friend repudiated with great indignation the connexion which exists between them and the Irish Society. We contended that the Companies were represented up to 1831, by having two members of each Company in the Society, as a sort of deputies. That, however, they rejected with indignation; but it seems that they intend to represent to your lordships, that all the acts done by the Common Council, however compulsory, whatever may be said about sparing the minor Companies, yet were done by them as the deputies of the Companies. There is a statement in the Bill, that the Corporation of London, in the time of James, and from that time to now, consisted of liverymen of the Companies, and that the Court of Common Council has consisted of liverymen. We say that the Corporation of London has not formerly consisted of liverymen of Companies, and therefore that that body does not represent the livery; and we state that it is not necessary to be a liveryman to be a member of the Corporation. Your lordships will find, however, that the Corporation of London, which is the Mayor and Commonalty and Citizens of London, in Common Council assembled—the Corporation of London are not distinctly members of Companies: they consist of a great

number, and they represent the whole body of freemen by wards, and the mode of election is by the freemen electing; but a freeman need not necessarily belong to any Company;—and it is, at all events, utterly impossible for my learned friends to make out that the Companies, *quod* Companies, elect the Common Council; and that is the only ground that they have that the Acts of Common Council are to be considered in that way as the Acts of the Companies.

But now, my Lords, I come to that part of the case where, not satisfied with making out that they are *cestuique* trust, and that we are mere trustees, (which, if established, makes all opposition to an application for a Receiver futile,) they think it necessary to charge us with a vast number of gross malversations and gross breaches of trust, as they are termed; and they talked of all this as being something of a recent description. In the first place, what are all these allegations? A certain number of dinners, a certain quantity of plate which has been given away, and some fees which have been paid to members—those are the sort of charges which are made. Now, looking to the constitution of the Society previous to the year 1831, which, it is never to be forgotten, consisted of the representatives of the twelve Companies; this sort of charge is a little entertaining, a little extravagant, and very like the old story of the Wolf and the Lamb. Here are our predecessors in the stream of time, and they complain that we have defiled this pure stream which was flowing on so uniformly and so purely, until it was wholly defiled by us. We stand below them, and say, “That cannot be—that we transmit it as we received it;” and then they answer, “If it were not you it was your grandfather or your grandmother, and you are accountable for it.” That is the sort of position in which we stand as to these parties. We have been elected since the purification, which took place in 1831. We have been endeavouring to improve what has been going forward: every thing is not to be done immediately; and though we do not admit that our predecessors have committed any breaches of trust, yet, if any such there be, we say there is no case made out under which we are guilty upon the application which is now made to the Court.



And here your lordships will see, that what I have now come to observe upon, is more exclusively applicable to the present motion. All that I have said hitherto would apply in case the parties were before the Court at a hearing, and in a regular way, and were not attempting by an interlocutory application to the Court to stop the course of proceeding which has taken place for two centuries; but if it apply to that, with tenfold force must it apply to the case, where, with all the information before them, as we have proved to the Court long before the filing of the bill, they apply to your lordships, in the absence of the parties who ought to be represented by the Attorney-General, to make an interlocutory order. As my learned friend, Mr. Knight, observed, the cause might by this time have been brought to a hearing;—every thing was stated in our first Answer upon which they now rely; all the items of our expenditure, the printed reports of the last eight years,—every thing of that kind appeared in our first Answer. But why do they now move? My learned friend Mr. Wigram, when this motion was first brought on, said that they represented the whole of the Companies;—that this was a case in which all concurred, and so your lordships would have supposed. It was stated that they had looked through the Answers; and there was nothing to show that every party did not wish for the success of the motion. But when your lordships insisted that they should all appear here, did there appear to be such a wonderful uniformity? Does it not appear sufficiently plain why, instead of bringing this cause to a hearing, it was suggested that they might obtain an opinion of the Court, upon an interlocutory application, without having such a turbulent camp as they now have to deal with, owing to your lordships directing all parties to be served? Though the gentleman who conducts this cause is a skilful general, and one well fitted to bring all his forces together, yet we find that some have come to a dead halt. The Vintners' Company, one of the twelve, said they entirely objected to a motion for a receiver, and they beat a retreat. Another of the Companies—the Goldsmiths'—another of the twelve—they halted; and then, when we come to the White Bakers', we find an open

mutiny: they are one of the minor Companies associated with the enemy;—yes, one of the very Companies that is associated with the present plaintiffs has mutinied, and turned round upon them, and opposed this motion for a receiver. But who can say why this cause should not, like all other causes, be brought to a regular hearing? and why should an interlocutory motion be made to dispose of this vast and important property, after an acquiescence, from the consequences of which the parties cannot by possibility free themselves?

Now, my Lords, it is a general sweeping view they give of our malversation, to which I will return. First of all we have a very sweeping charge: they tell us that our receipts were ten thousand a year for the last eight years, and that the expense of management has been five thousand a year. Your lordships will recollect the statement, put forth in the Answer, of certain very heavy law-suits which took place with regard to the recovery of advowsons; and your lordships will find that those law-suits were expressly mentioned in that remarkable Letter of the Secretary of the Society, Mr. Schultes, of November 1830, in which he informed all the Companies of the law-suits that were going forward, the purposes for which they were going forward, and the expense of them; and intimated that all was done by the Society in pursuance of their public trust. He told them all that, and got letters of thanks from two or three of the Companies, two of which are represented by my learned friend Mr. Wigram. All these expenses, therefore, were incurred with the knowledge of these parties; and the Society were actually thanked for their diligence in carrying on those suits. Now we find that there is an item of law expenses alone of 7938*l.* in the eight years—that will take off a thousand a year on the general average. And if your lordships take the trouble of going through the account, (which I will not now lay before your lordships,) by referring to the printed tables of expenditure, you will find that those heavy expenses correspond with the years when the heavy law-suits took place; and that in the years when there were no heavy law-suits the expense was 74*l.* or 75*l.*, being the ordinary expenses: so that

they take the years when those heavy expenses occurred, which they have said were properly incurred; and then they charge us with 1000*l.* a year on this head of management. Then there is another item—Irish Chamber, 4600*l.*, getting on to nearly five thousand; that makes another 500*l.* a year distributed over the whole eight years. The Irish Chamber was found necessary for the purpose of preserving our records and documents; for it appears, that owing to our not having a good and proper place for them, a fire took place, when many were burnt; and we state the particular year in which this Irish Chamber was built; and that they put down also as a charge of management, as if we were going to build an Irish Chamber every year of our lives. Thus, my Lords, I have explained 1500*l.* a year. Then, looking at the other items, we find “salaries and gratuities in England, 5973*l.* ;” there is another 600*l.* a year over the whole eight years which they have taken. We do not know about these salaries and gratuities—part of them may be for management; and being in England, many of them no doubt are; but many of them may be for parties who are interested under public trusts in this property. Another item is, “salaries in Ireland, 4611*l.*” Now they have told your lordships that we have said that we cannot set out clear accounts. We have said no such thing. They ask us to set out accounts, distinguishing all that is required for the management of the estate, and all that is required for the management of the trusts; that, we say, is impossible, because we may employ a number of officers, and pay salaries to them, which we have not apportioned for those two duties respectively. One officer performs a variety of duties with respect to the management of the schools, or the management of the towns, or of the estate. We cannot separate those; and until your lordships are in a condition to have all that sifted, and this separation made, which we never dreamt of making,—never thinking that there could be any question arising upon the subject, your lordships are not in a condition to see how much is required for the management of the estate, and how much for the management of public trusts; but after deducting 1500*l.* a year for the law-suits and the Irish Chamber, I apprehend the 3500*l.* a year,

which will remain of the 5000*l.* will not be found an exorbitant charge for the payment of all salaries and all expenses connected with the management of these important trusts.

Then, my Lords, they tell us that the article of dinners is extravagant. I think my learned friends, Mr. Knight and Mr. Jacob, have disposed of that; and it is not for me, as a member of one of those Companies, to raise any objection to the mode in which the Companies dispose of their property in dinners. But your lordships will recollect the case of the Attorney-General and the Skinners' Company, in which the master has allowed 200*l.* a year for one visit to Tonbridge School; and if Master Farrars' memory were required to be refreshed as to the occasion for which the allowance was made, he would, I think, admit that it was for a dinner: it could not be for the expense of going down or returning. Seeing, therefore, the precedent which they have set us, they cannot fairly complain of this expense of dinners. But one answer applies to all this;—the time during which they have been fixed, with a knowledge of the facts. The "Concise View" was printed in 1822—that was at the time when there were different members of the twelve Companies upon the Society; and we find by that book that the first dinner took place in 1703, the first portrait painted was in 1735, the first plate given was in 1739, the first fees to members (a very objectionable item, as they have endeavoured to represent it to-day, though it comes to about the expense of the coach-hire from Kensington,) were voted in 1683. Your lordships will find this under all these dates in the "Concise View;" I have the pages, but it is scarcely necessary to trouble your lordships with this, when in fact there is not one abuse that they complain of, with the exception of the election at Coleraine (of which I will say one word very shortly)—there is not one single abuse that did not take place very nearly a century ago, and some of them 150 years ago, all of which is stated in the "Concise View."

With regard to that election at Coleraine, your lordships will recollect that we are appointed to watch over the by-laws of Coleraine and Londonderry. Your lordships will find by certain instructions given to the Committee that went over to

Ireland in 1819, which were cited by Mr. Jacob, that one of their instructions was to see that the Corporation resumed its right of controlling the by-laws of Coleraine. Now in consequence of the Corporation not having controlled those by-laws, it does appear that, though the charter is a charter granting the right of election to all the inhabitants of Coleraine, the Corporation alone, by some by-law, I suppose, had usurped the right of returning Members; and it might be a question worthy the consideration of the Irish Society, if they by their neglect had allowed such an usurpation to take place, whether they were not bound to see the inhabitants righted. They would see instances of interference at elections in 1613, 1712, 1714, 1727, 1733, 1747, 1759, 1760, 1768. In the "Concise View" there are given all those instances of interference at elections in Coleraine down to 1768. From that time they do not seem to have had so much to do with it; but the Irish Society were referred to upon the election in question; and, after all this had been done by their predecessors, was it a very great, or a very extraordinary misconception of their duty, that as they had suffered the rights of the inhabitants of Coleraine to be injured, they should think it desirable to protect those rights? The Coleraine people having nominated the Governor of the Society as a candidate without the knowledge of the Society, the Society did, constituted as it then was of members of the twelve Companies, resolve to petition Parliament as to the election. I do not say that it was not wrong; but I ask your lordships to look at all these circumstances. The petition was presented, as it appears, in November 1830; and in that very November 1830, and after presenting a petition to the House of Commons, which is a matter of some public notoriety, and was in this case presented by Mr. Spring Rice, (the present Chancellor of the Exchequer,) who was then, too, a person of some eminence in the House,—after, I say, all this, Mr. Schultes writes a letter in 1830 to the Companies, in which, besides stating that the Society had a number of important rights, he tells them, "that in furtherance of this object, and to recover very valuable rights which have been long usurped, particularly the patronage and right of pre-

sentation to a considerable number of advowsons granted to them by their charter, as well as to establish their conservative jurisdiction over the Corporations of Londonderry and Coleraine, the inhabitants of which latter place have earnestly solicited the Society to exert their authority for the restoration of their chartered and corporate rights, this Court have found it necessary to send frequent deputations of their members to Ireland, in order to carry their measures into effect." And then he goes on to state the expenditure which has been occasioned. That is the letter of Mr. Schultes: he tells the Companies that the Society have been anxious "to establish their conservative jurisdiction over the Corporations of Londonderry and Coleraine, the inhabitants of which latter place have earnestly solicited the Society to exert their authority for the restoration of their chartered and corporate rights"—this being at the very time that these gentlemen, members themselves of the different Companies, had actually presented a petition to the House of Commons upon the subject of that election. What did the Society do, however, when purified? It immediately abandoned these proceedings. They were obliged to pay the bill of costs; they did not feel that there was any sufficient malversation for them to attempt to throw the expenses upon their predecessors personally, but they instantly resolved to stop the proceedings—and they were stopped, but the Society furnished another gentleman with information, which enabled him to establish the claim of the freemen of Coleraine. This is a case upon which a great deal has been said as being a breach of the charter, but which finally established a right of which the citizens of Coleraine had been unjustly deprived.

Then, my Lords, does the case of acquiescence rest here? Why, not only was this book in 1822 published with all those facts stated, but in 1824 we fix the clerk of this very Company with having made application for a copy of our accounts, which application was rejected, because, as we say, we are not bound to give copies of the accounts to all the Companies; but he was told that he might have free access to all the accounts; and we state that he had access to them, and did examine them as much as he pleased. Therefore, in the year 1824, there was

the clerk of the plaintiffs themselves having access to all the papers, and to this printed book, though in all probability the Skinners' Company had had that long before, for it was printed in the year 1822; and it is in the year 1831, and after that memorable change had taken place, which I do solemnly believe is the occasion of this whole suit, by which the monopoly of the twelve Companies had been disturbed;—then it is, and not till then, that we have a complaint made against us, that we do not give copies of our accounts, which it is true we have never done, as we have been advised that it is not desirable for us to throw that expense upon the Society, who might be put to an immense expense in giving those copies; but we have always given free access to those accounts. Then, after all these acts of acquiescence, after all this full information, what do they do? They file their bill on the 16th of July 1832; the Answer is put in in January 1833, and there is not one single fact in the further answer, or the answer to the amended bill, which puts them in a better position. All those facts in the printed papers were stated in the first answer,—the first answer was put in on the 30th of January 1833. They asked us in their bill for a full account of all receipts and payments from the time of Charles the Second; your lordships will see that that is quite ridiculous, and accordingly we stated in the Answer the receipts for the last eight years, supposing that that would be excepted to, and it was; we went before the Master, and they then asked for an account for twenty years, and we gave it to them; but in the first Answer we gave all the alleged objectionable items: there were the items of the fees to members, and every thing was stated; every material was given them then for moving for a Receiver that they have now. The Answer to the Exceptions was filed on the 7th of October, 1833, and the Answer to the Amended Bill on the 17th of November, 1834; and we have no application for a Receiver till April, 1835.

Now, independently of the question of disposing of rights of this kind in this manner, I only ask if the acquiescence of these parties is not a just ground for refusing their application; and I will refer your lordships to a case of *Gray v. Chaplin*, in 2d Russell, which was on a motion for a Receiver, and which is

rather a strong case ; it is shortly stated in this way—that “ the commissioners of a canal make an agreement for letting the tolls not warranted by the act under which they derive their authority, and prejudicial to the interest expressly reserved by the act to the public ; this agreement is acquiesced in for forty-seven years, without complaint on the part of any of the shareholders, and during that period the lessee remains in undisturbed possession of the tolls. The Court will not, at the suit of shareholders, disturb his possession by the appointment of a Receiver ;” and a good deal is said in that case upon this point of acquiescence, and my Lord Eldon held clearly that this acquiescence which the shareholders had been guilty of, precluded them, in a bill by them, for relief from obtaining a Receiver ; an important objection was raised in that bill, that the Attorney-General ought to have been a party. It was stated that this act was prejudicial to the public, but the Attorney-General was not made a party, and the Lord Chancellor says, “ The difficulty which in this case presses most on my mind, is, whether these plaintiffs can avail themselves of any such interest as the public may have to obtain relief against the defendants. Can a private individual complain, not on behalf of his own private interest, but of the public interest ? Can he so complain for the purpose of getting rid of an agreement, by which, so far as his private interest is concerned, he would be bound ? The shareholders agree with A.B., so as to bind themselves as between each other, and between each of them and A.B., that A.B shall take all their interest in the tolls for ninety-nine years, he paying to them during that period 5*l.* in every 100*l.* subscribed. If they are proved to be parties to such an agreement, the question would be whether, to the extent to which they had an interest in the canal, they could not so part with it.” He says, “ Independently of the question of public right, the case seems to me to be as hopeless a one as ever was thought of. If the shareholders knew that the commissioners had made this agreement, and have chosen to stand by for forty-seven years, they could not be permitted to maintain a suit here. Would not the Court say, Whatever the Attorney-General may do, you who have so conducted yourselves



shall not be plaintiffs in a Court of Equity?" And Lord Eldon, in page 147, says, "As the cause stands, there is a want of parties; there is no person here to represent the public. Let us suppose that the Chaplins have received so much as, after the necessary expenditure upon the canal, to pay more than the principal and interest of the shares, the account ought to proceed upon such a record as will enable the judge to determine who is to take out of Court." I beseech the Court to attend to this—"The fund which the appointment of the Receiver shall have brought into Court. If, on the other hand, the monies received by the Chaplins are not sufficient to pay the principal and interest of the shares, the account must be taken in such a way as to bind not only the parties as to their private interest, but those who, standing behind them, have an interest in the due application of the tolls. Upon the whole, I have very great difficulty in bringing myself to think that parties suing for their private interest can call upon me to appoint a Receiver on their behalf, under such circumstances as exist here, and upon such a record as this." The only difference between that case and this is, that there the application was against the parties who had taken the lease, and not against the trustees, who had given it;—and here the application is against the trustees who have committed these acts. But has not the public an interest in this motion? is not the case stronger than the case of *Gray v. Chaplin*?—for here are parties attempting to establish a Receiver upon this estate, behind the back of the public, who have no other protection than that which we are obliged to throw around them as far as it can extend, and which the City may throw around them too. My learned friends who represent the City have been brought here only to represent the Brown Bakers, though I must think that your lordships will see that the City of London are a portion of the public who have an interest in this transaction, inasmuch as it was for the improvement of the City of London. They, however, appear to oppose it as strongly as we do; the other part of the public, the corporations of Londonderry and Coleraine, and the inhabitants of Londonderry and Coleraine, have no representatives here. But yet this is a motion to deprive them of property which has been applied for two

hundred years for their benefit. And is every little schoolmaster who has had his 50*l.* a-year, or every Presbyterian clergyman who may have had ten or twenty pounds a-year, or every widow, or every orphan, to be brought here to petition the Court (in consequence of a motion for a Receiver made behind their backs) to have some portion of that property doled out to them under the expensive process of a reference to the Master?—for there must be a reference to the Master in every individual case, if the money should be brought into Court. Are we, again—a chartered Society, after this acquiescence of centuries, to be annihilated at once?

It is a complete extinguishment of us if we are to bring this money into Court. If this be the only property that we have, if we have not a single farthing to pay a door-keeper or a schoolmaster in the town of Coleraine, or a single other individual, who has been paid by us, what is to become of the Society itself? Are they to close the Irish Chamber, or do the plaintiffs expect that a number of individuals are to bestow their time and attention, and all their care and pains, upon this subject, and not only to have no remuneration, not only not to meet in social conviviality, but are to be called upon to pay the expenses out of their own pockets? The whole Charter is to be at an end, for we cannot go on holding sittings—and all this, because these parties choose to tell us, after a practice of 200 years, which has never been disputed till this moment, that this Receiver ought to be appointed.

Now your lordships heard of claims being set up;—we set up, as it was said, some marvellous and extraordinary claims. These claims, when they were read, were read from a book printed in 1822, and were neither more nor less than this—that there are public purposes to be answered by the charter, and that we have a full and absolute discretion to apply what we think fit to those purposes. We disclaim any right of disposition of the property as by ownership, but we claim a right to apply this money to those purposes; and then we are to be told that this is a new claim, because it is stated in the year 1822. But I have shown to your lordships, that these claims were made in the gift of timber, in 1741; they were made when

the Society granted manors, and they were submitted to in respect of the reservation of timber, and of minerals, and above all of quit rents. These claims were made in 1615, and in the grants repeated in 1661, and in every subsequent dealing that has taken place. The rights of the Society have been sanctioned by many Acts of Parliament; there is no public enactment relating to the plantation, even though it be but about a race-course; without directing that the accounts shall be submitted to us as well as to Parliament. All these claims spoken of have been made, and are in consistency with every document or deed. But who are the real parties who now make a claim for the first time? We state, by fol. 456 of our Answer, that no such claim as is now made by the plaintiffs was ever made till now. And, in addition to all this, I would ask, what was the right and proper course, if the plaintiffs had an honest and honourable purpose towards the public and towards themselves? If there had been any of those breaches of trust, was not there a plain and open course by the very terms of the Charters themselves? I will not touch upon the province of those who are to follow me—I will not say whether a visitatorial power is vested in the City; but this I will say, that there is a power in the Corporation of the City of London to remove one or all of the members of the Irish Society misconducting himself or themselves in office; that if one member of the Society has misconducted himself, or the whole Society, whatever may be the case, or any number of members misconducted themselves, and if these plaintiffs wanted to set themselves clear before the public, as persons who claim to have an honest and a proper administration of the funds, as persons who are willing (as they say they are) that any purposes beneficial to Ireland should be carried into effect,—they might have petitioned the Court of Common Council, and have called upon them to have at once re-established the Society upon a proper and wholesome foundation.

I do trust that, when your lordships see that they have taken this unexampled course, first of all in setting up a claim of being *cestuisque* trust upon a case of this description, asking for a partition, asking for it in shares, which are totally

unaccountable except under a supposition that we have this jurisdiction and control over the Companies, which the Irish Society have always exercised, that your lordships will not be induced to grant this application. Let them talk of dining as they will, I trust that your lordships will not be inclined to take away from us funds which have been so honestly applied in Ireland as to have called forth the remark of every intelligent traveller that has been in that country—that the Ulster plantation is the most happy part of Ireland; where there is none of that contest going forward which disgraces other parts, where this Corporation has been diffusing for centuries the light of the gospel, and by their charities, which they have distributed to a great and beneficial extent, have diffused the heat of the gospel, without which its light is but the *ignis fatuus* of fanaticism;—when you find that Ireland has thus prospered under this administration, it will not be your lordships' inclination to grant a Receiver of this property. And for what purpose can it be but to drain it off by miserable driblets, not applying it to any beneficial purpose—to any thing by which the good of Ireland could be promoted? I will not say that the plaintiffs would apply their portion to dinners, but most assuredly it cannot be applied to those beneficial purposes that have rendered this colony an important part of the Protestant establishment of Ireland.

I do trust that I am justified,—though I regret that I have had to make observations of such length, in concurring with my learned friends in asking your lordships to dismiss the application as a mere experimental one,—without any object but to obtain an opinion on the substantial merits of the suit—and to dismiss it with costs.

Sir CHARLES WETHERELL.—My Lords, in this case I appear for the City of London; and your lordships will recollect, in the early stage of this motion, I took the liberty to say that it was utterly impossible that this motion could proceed unless the City of London appeared at the discussion of it; and in consequence of that observation, afterwards the City of London did claim to interfere. It is for my purpose immaterial whether the promoters of the motion consider themselves as

having served the City of London, or whether the City of London are to be considered as having claimed to be served; because, as your lordships will recollect, there was some discussion upon that—I stated that it seemed to be immaterial; and in the progress of the motion, your lordships would see the absolute necessity that the City of London must be a party, before your lordships come to a decision upon the motion. It was with very great difficulty that I convinced,—and I do not know that my learned friends to the right hand are yet convinced,—that the City of London are necessarily parties to it. My Lords, however, in the situation in which the motion now stands, your lordships cannot fail, I think, to have perceived that the City of London have, in this subject, duties and interests and rights vested in them, of the most important description. They are under the charter, which I shall presently call your lordships' attention to, beyond all doubt (in my humble apprehension), as important and as material a party in this case as the Irish Society is; because, from what your lordships has heard in this case—and upon that part of the subject I shall supply a little more—the City of London, under these charters, are the appointers of the persons who are to constitute the Irish Society, and are governors and visitors of the Irish Society; and it is new to me, that, in any suit in the Court of Chancery, a case can be heard, and can proceed, in which the ruling and governing body, or the ruling and governing individual, is not to be heard, before an order is made upon a motion, or a decree made in a suit; and yet the individuals on the other side fancied, and presented to themselves an idea, that your lordships could, in the progress of this motion, after you have heard it, ultimately make an order by which the receipt of the revenue now in possession of the Irish Society could be taken out of their hands, without hearing the City of London—the appointer, governor, and visitor, over the Irish Society; and that, without asking the question, (assuming that this delinquent body, the Irish Society, had committed any breach of trust,)—without asking the question, Has a complaint been made to the City of London, from whose body the members of the Irish Society are elected, and whom, under

this charter, the City of London can remove for that misconduct? Strange it is that in this long and voluminous record, in its original or in its amended shape, nowhere is the statement or charge made—nowhere in the speech of my learned friends—nowhere in any evidence which your lordships can legally look at, or in the course of things which you cannot strictly look at—nowhere in this record, or out of this record, is it alleged or pretended that the City of London, the undoubted visitors and governors of this Irish Institution, have ever been resorted to with any complaint against the conduct of the Irish Society; and yet, as the motion was first to be brought on, and as the record stands at present, you are to oust the Irish Society of their powers derived to them under the charter; and you are to oust the governor or visitor of this subordinate Society, without any complaint made that the visitor or governor has omitted to perform the duty, there being no allegation to the governor or visitor that the subordinate body has committed a breach of trust, under which the visitor and governor could be called upon to remedy and redress it.

My Lords, such was the state, such is the state in which the Record stands, and such the state of the motion as it stands at present before your lordships. You are called upon by this motion to take out of the hands of the Irish Society the annual receipt of a very considerable income—to commit that receipt to the power and management of a Receiver—to put a perfect extinguisher, *pro tempore* at least, upon the Irish Society; and all this was to be done, as it was originally proposed, without permitting the City of London to interfere in the motion, it being alleged that they have no interest, either beneficially in its proper sense, or with respect to a fiduciary or public nature, in the more large and comprehensive sense; and that you could make an order upon this motion precisely in the same manner as if the City of London had never been named in those charters.

Now, my Lords, that being the state of the motion, and such being the state of the record, I shall be under the necessity (I hope at no great length) of calling your lordships' attention to the novelties, the unheard-of novelties, which have

occurred upon this occasion. I do not know that I need trouble you with reading the motion: it is expressed in the ordinary form—"That a Receiver or Receivers may be appointed of the rents and profits of the estates and premises mentioned in the pleadings in the possession of the defendants, the Irish Society, with all customary directions; and that the Irish Society may be restrained by injunction of this Court from collecting, getting in, and receiving the same rents and profits, and every part thereof;"—so that this motion is a motion like the ordinary case of a Receiver, in which the individual in possession is to be turned out of possession, and the entire receipt and possession to be placed in the hands of and under the direction of a Receiver.

Now, my Lords, having stated to your lordship this general view of the case, I must next call your attention to the prayer of the bill. It has been properly stated by my learned friends that the Company who file this bill, namely, the Wardens and Body of the Skinners' Company, consider themselves to be entitled, in a direct and beneficial sense, to the share of that portion of the estates originally given by the Crown, which still remains in the hands of the Irish Society. The Skinners' Company say—"You have in your possession certain undivided estates and property; of those undivided estates and property you are merely our naked trustees; you are in the receipt of ten, twelve, or fourteen thousand a-year, derived from various customary dues for various fisheries, and other emoluments of that description; and of that sum you, the Irish Society, are now reduced to the condition of naked, dry trustees; you are a mere naked trustee, holding this property for the benefit of certain *cestuique* trust; of those *cestuique* trust we, the Skinners' Company, are one; and we, the Skinners' Company, have a right to call upon you as our trustees to divide among us and the other twelve Companies those yet undivided estates."

Now, my Lords, literally, in two words, that is the fair and the legal and the undoubted purpose of this bill. They treat it as the ordinary case between A and B, in which A is trustee for B of a certain estate or sum to be divided between B and

other tenants in common. They look to the ordinary case of a tenancy in common, where a trustee for the united body of tenants in common holds an estate, of which those tenants in common have a right to receive partition; and, conformably with this theory and this fancy, Sir John Campbell makes no appearance upon the record; because true it is that if this Society is a naked trustee for those bodies, for their own use and benefit, which is what they ask, that reduces it, not to a case in which the public is concerned,—not to a case of public trust within the reach of the statute,—but to the common case of *meum* and *tuum* between the private trustee and the private owner, and that is the view which the Skinners take and have in their bill taken of this case; and, conformably with that view of it, your lordships will find that the prayer of the bill is so framed and adapted. It is a short prayer, and I will take the liberty of reading it, and I hope that I may be pardoned in calling your lordships' attention to this view of the case, because, after so much discussion respecting Coleraine and Culmore, some of the gentlemen have forgotten the prayer,—your lordships cannot forget,—I should almost suppose that they have lost their recollection; and I say that they have lost their recollection, and imagined that they were discussing this case in the Court of Chancery in Ireland, or in any other place than in the Court of Chancery in England. In the prayer of this bill, treating it as a case between *meum* and *tuum*, it prays, “ that the plaintiffs, the Skinners' Company, and the other Companies who contributed to the expenses of the said new plantation in Ulster aforesaid, and to whom and for whose benefit the said lands and hereditaments were allotted and conveyed as aforesaid, are beneficially entitled to the rents and profits of the said ferries, fisheries, and town lands, subject only to the payment of said yearly sums to the Bishop of Derry and the Governor of Culmore Castle, and to the charges, if any, to which the same are subject under the said articles of agreement and the charters respectively; and that it may be declared that said Irish Society of London are trustees of the same rents and profits, subject as aforesaid for plaintiffs and the said other Companies; and that an account may be



taken by and under the direction of the Court, of the rents and profits of said ferries and fisheries and town lands which have been so received by the said defendants, the Irish Society of London, or by any person or persons on their behalf or for their use, or which without their wilful neglect or default might have been so received." That is the prayer of the bill adapted to the case which I have just mentioned. In the prayer of the bill is also introduced an alternative in these words:—" Or if this honourable Court shall be of opinion that such partition ought not to be made, then the said Irish Society of London may be removed from being trustees of the said ferries, fisheries, and town lands, and that one or more of the said Companies, or such person or persons as to this honourable Court may appear best, may be appointed trustee or trustees of the said ferries, fisheries, and town lands, or that such other arrangement as to this honourable Court may appear just and proper, may be made, securing to plaintiffs and said other Companies the due payment of their respective proportions of the rents and profits of the said ferries, fisheries, and town lands; and that in the mean time a Receiver or Receivers of said rents and profits may be appointed under the decree of this Court; and that defendants, the Irish Society of London, may be restrained by the injunction."

So that they say, first, you are trustee for us, you must divide all those rents and tenements and fisheries amongst us, and deliver to us legal seisin of all the undivided property which you hold in your hand; or, if that is not to be done, then we pray that the Irish Society may be extinguished, and that your lordships would constitute, what I apprehend the Court of Chancery has never had power to do, a new corporation; that you should incorporate one or two of those Companies; and then, that the new incorporation, or new Society, which is to be raised and created in this Court, that they may have assigned over to them the whole of this mass of undivided property;—and then, that this new Society may share out and partition among the Companies who claim it each his aliquot share and proportion of the funds in question. The bill, and the prayer of it, say that all this partition is to be made

“ subject to the payment of the said yearly sums to the Bishop of Derry and the Governor of Culmore Castle.”

These two items, say the framers of this bill and of this prayer, we allow still to be subsisting charges affecting this estate; but after those subsisting charges are defrayed, the whole rents and profits of this property, now vested in the Irish Society,—the whole of that mass of account is money divisible among the Companies, of which you, the Irish Society, are the naked and dry trustees. My Lords, I have before stated to your lordships, that if indeed it could be shown that this is a case of *meum* and *tuum* between those Companies and the Irish Society, not clothed with any public trust, undoubtedly Sir John Campbell would have nothing to do with the case of A. As the bill is framed, I should perhaps say, that if there were only two public payments, namely, those to the Bishop of Derry and the Governor of Culmore Castle, those being public officers, and the public having an interest in preserving the rights of those two persons, who this information admits have prior claims upon the funds; if there were no public trusts or charitable trusts, (a term synonymous with public trusts,)—if there were only those two public trusts affecting this income, then the Attorney-General should be a party to protect those two interests. But I will satisfy your lordships,—indeed I should not have supposed that you had carried the case in your mind; if it were necessary, I should call your lordships to a list of public trusts, in addition to the trust for the payment of the Bishop of Derry and to the Governor of Culmore Castle.

My Lords, under this state of things, the prayer was perfectly conformable to the theory which the Companies chose to set up. It is their pleasure; they do not like dinners, but they like to put the knife and fork into property which does not belong to them. These gentlemen do not like that other persons should cut up a haunch of venison or partition a dish of fish, or that this should go on at the tavern,—it is the greatest sin in the world; and yet this party, who cannot bear to see a haunch of venison cut up in a tavern, can present a bill in which they are cutting and carving up, and asking of your

lordships to give them a share,—a slice of the property deposited in the hands of this Society, and the whole of which is from year to year and from month to month subject to payment for schools and charities, and other public works, the preservation of which those haters of dinners have called upon your lordships to discontinue. They who complain that the tavern bills are so large, the very men who complain that two or three hundred pounds is not to be paid to the unpaid and unsalaried persons who carry on this public trust; they say, “ We are content that the payment to the Bishop of Derry and the Governor of Culmore Castle shall continue; but as to all the schools and institutions which have been planted, and have from time to time been kept on for the religious, moral, and civil improvement of a numerous class of persons, and have rendered that part more cultivated and refined than any other part of Ireland;—those schools and schoolmasters shall go unpaid, and every shilling of this property shall be divided for our use and benefit;”—for those are the words of the bill,—“subject to two payments to the Bishop of the Diocese, and the Governor of the King’s fort.” It is something too ridiculous to hear gentlemen with this mock affectation, this puritanical foolery, complaining of the expense of a dinner, and calling upon this Court to put into their hands the whole of this money, which, when it is put into their hands, what they are to do with it I know not. They tell us, by the prayer of this bill, that it is their own, and I presume that the Skinners’ Company, (what they will do with it when they take it I know not)—but I suppose that they will not condescend, as they did in the case of the Tunbridge School;—those gentlemen who have such a phobia upon the subject of dinners, they will not, when they get four, or five, or six hundred pounds of it, spend 100*l.* or 50*l.* in dinners;—these gentlemen, superintending the Tunbridge School under a decree which they did not, I believe, except to, were put into the receipt of 200*l.* per annum; and when they have a share of this money,—what they would do with it I know not, but I know this, that they who are the complainers of this expense do receive from the Tunbridge School 200*l.*—the prime Master and Wardens—they all go down in the Tunbridge Tele-

graph to Tunbridge, and for that they receive 200*l.* a-year. But, however, my Lords, it is enough to have noticed this *ad captandum* complaint. I suppose that this bill was filed during the fever of Municipal Reform, as it is termed, and, perhaps, all that sort of fever, all that erysipelas irritating so much the surface of the skin, is not quite in so prurient a state as it was ; and now, at least, we are bound not to run away too much with the notion, that because fifty or sixty, or two hundred pounds a-year is expended, that that circumstance, even supposing the expenditure, abstractedly speaking, may not be correct, (which I do not admit, with reference to this case,) we must patiently hear this case gone through, and not run away with this complaint, which may be suitable for a hustings' meeting, or some of those popular places where those things may be swallowed with considerable greediness ; it is not in this place that we must overturn all the practice of the Court, and jurisprudence of this country, merely because, upon the heat of some popular clamour, a question may be raised whether this or that item of expenditure may not be more than in a rigid point of view might be called for.

My Lords, under these circumstances of the case, the progress of the discussion has shown to your lordships,—and I will not travel through it,—that this case, which was opened as a case of *meum* and *tuum*, turns out to be one of a different description ; and upon this part of it I am afraid I shall go more into detail, though I shall very shortly present your lordships with a summary of it,—that instead of this being a net sum divisible among these Companies for their own use, it turns out to be a sum which, from the time of the original establishment of this plantation in Ireland to the present period, forms a continuing existing expenditure of a public trust,—that proposition has been, I apprehend, clearly and satisfactorily established to your lordships, in opposition to the prayer of this bill.

Now, my Lords, I am grateful to your lordships for being permitted,—for when a corporation is permitted to be heard by their counsel, it is not too strong a word to say, grateful for being heard,—I am rejoiced at having an opportunity of claiming my right of being heard ; and I say, with respect to the City of

London and the Common Council of the City of London, I believe there are no bodies less desirous of conniving at any abuse than those bodies are; but I beg leave, for them, to enter my protest against these proceedings, the only delinquency charged being for entertainments, there being no other charge against this Society for misconduct; and then, I say, I am grateful for the opportunity of being heard. As a lawyer, I cannot but feel that gratitude—because the gentlemen, the Reformers, have forgot where they are, a want of reminiscence not unfrequent with Reformers. Do the gentlemen, I do not mean my learned friend Sir William Follett, (whose presence it is gratifying to see upon any occasion), and the gentlemen at the right hand; but do the gentlemen know that they have been addressing the Court of Chancery? I should think not; because they pray your lordships that you should make a decree to allot and divide among those twelve Companies those lands in Ireland. Why the Reformers have forgot that the Court of Chancery in England cannot make a decree to divide lands in Ireland! I am not applying this argument to the motion for a Receiver. Your lordships may make decrees which act *in personam*. If a person has a sum of money in his hands, or a balance of account, you can direct the individual to pay it over; and I do not mean to say that, in point of jurisdiction, you have not power, if there is a Receiver here, to get hold of the money; but I think that it is a novelty, introduced for the first time into this case, that your lordships are to make a decree upon the Irish Society, directing them to allot and divide those properties in Ireland, the fisheries of the river Bann, and Lough Foyle, and the Castle of Culmore, and all the local and territorial rights, the town lands, and various other things partaking of the realty. This your lordships are called upon to do by the strange prayer of this strange bill, as strangely argued as it is strange. One would suppose that your lordships had a roving commission—one of your lordships in highest station—hearing *pro hac vice* this cause; one would suppose that the Lords Commissioners had a roving commission, and that they held the seals of Ireland as well as of England, though that even would not have done to authorise the Court to make the

decree;—and my learned friend who may have the prayer of the bill before him, may not have had his attention called to this circumstance, that it is a prayer which cannot be granted, because it has been established that this Court cannot make a decree for a partition of lands in Ireland: that has been decided in several cases.

It was decided in a case in 1st Vernon 421, where it was held, that with respect to “ precedents where this Court refuses to hold plea of lands in Ireland—they cited Sir William Pettit’s case, where the bill being to have a partition of lands in Ireland was dismissed, (but note, in that case, as to the matter of account, it was retained,) and in the case of the Countess of Lancharle against O’Brien, 24th Charles the Second, upon articles of marriage, all the transactions having been in Ireland, the bill was dismissed.”

There is also another decision, which I think is referred to, which I looked at when I read over this bill, which is the case of Cartwright *v.* Petters, in the second volume of Chancery Reports, page 214. Cartwright exhibits a bill against Petters, praying for an account of the rents and profits, and a partition of the lands. I take it, that upon the precedent of this case the Skinners’ Company founded their bill, though they have forgotten that part of it which they might as well have recollected, that this case is not heard before Lord Plunket in the Irish Court, but before your lordships in Lincoln’s Inn Hall. “ The Lord Chancellor declared that, as to the profits, the bill was good, the person being in England, for they are in the personalty; but as to the partition which was in the realty, he could not here proceed, for he could not award a commission into Ireland,—and the bill for a partition was in the manner of a writ of partition at the common law, which lieth not in England for lands in Ireland.” So that the gentlemen here have called upon your lordships to divide the land among them, which your lordships have no right to do. If the gentlemen mean to say that this bill merely means to act upon the receipt, and that you are to hand over the surplus, that will be another view of the case. That will, I think, assist them very little; because, if it be so, you are to suppress the Irish Society, and

constitute a new Society; and then this new Society is to be armed with the power whether of dividing the lands or of dividing the money among the twelve Companies, who will be entitled to it; but they clearly mean by this bill to follow up the license in the time of James the First, under which, as your lordships will recollect, certain lands were divided among the Companies; they follow up that principle, and say, "From that time to the present you have kept in your hands certain estates not yet divided; you must divide the lands and other premises which have been left undivided since the time of James." I have thought it right to call your lordships' attention to the position in which this case stands; and I think I do not misrepresent it when I say, that, from the beginning to the end of it, the gentlemen have totally lost sight of this point, and a most material one it is. I very much doubt whether, if it applied to the case of a permanent Receiver in Ireland, your lordships have power to do an act of partition; but I will not undertake any argument of that sort to burden myself with the assertion of the difficult and perhaps dangerous point respecting partition of lands. It is perfectly clear that this Court cannot do that which it is now asked to do by this bill, if I understand it, namely, that the undivided property shall be divided, and seisin given of it to those Companies, following up the license granted in the time of James the First. It is perfectly clear that the case lies out of your jurisdiction. Your lordships will, I trust, give me credit that I am not introducing this topic here for the purpose of avoiding a turning aside from the main question—no such thing; I am only calling your lordships' attention, as it is one's duty to do, to the peculiarity of this case, and to request your lordships' attention to points that have been totally overlooked in the whole history of it; and therefore I will say nothing further upon that subject, than that I trust that that question, of what the Court of Chancery can do in working out the prayer of the bill, is the first thing to be looked to. I have admitted that orders and decrees touching money, the Court can undoubtedly make; but touching the realty, those it cannot make. Now this is a point of such novelty and such peculiarity, that it is enough for me to put your lordships in

possession of a cautionary view, that the Court of Chancery may not be led to take a wrong step in this extraordinary suit, in the absence of the Attorney-General,—in the proposed absence of the City of London, for it was with great difficulty that I could originally claim sufficient credit of my learned friends to have a sufficient case for the City of London to deserve your lordships' consideration.

My Lords, such being then the prayer of the bill, such being the state in which the motion now stands, I shall, with your lordships' permission, venture shortly to recapitulate what you have heard. I can bring forward no new historical fact, nor can I place that history in any new point of view. The case has been most ably argued by all the gentlemen who have gone before me, and the case of the City of London is in some respects the case of the Irish Society, but in other respects it is the case of the City of London. For the City of London I claim that, by the history of those transactions and by the subsisting charter, they are invested with the office of superior governors and visitors of the Irish Institution;—that, my Lords, is the claim of title which I put in for them. Now, my Lords, to establish that title, I should willingly refer myself to the history which your lordships have heard, for the reasons I have stated, that I can add nothing. However, a very short summary, and a recapitulation of dates, is enough. It was proposed in the commencement, in the time of James the First, to form a plantation of this extensive province in Ireland, and certain monies were to be raised. I will not enter into the question of whether the Companies were voluntary or compulsory contributors to those funds; it appears to me not to be very material. They say that they were voluntary contributors, and throughout the whole of this case they have argued it as if they were purchasers for a valuable consideration—as if they had actually bought, and were entitled as of their own fee or for their own use and benefit, each to an aliquot part of the property now vested in the Irish Society. I will not enter into the consideration of how far they were or not voluntary or compulsory contributors; nor is it very material, for we must go with history upon this subject, and



not supersede charters, and not travel back two centuries since, and inquire whether, according to the mode of governing the City in those times, the monies raised of the Companies were voluntarily raised, or whether they were compulsorily raised. Therefore into that first head I do not wish to enter beyond the argument of the gentlemen who stated it, thus—that supposing that there was more of compulsion in the Companies' contributing the sums which they advanced than of volition, yet, if the practice of two centuries has defined what their rights are,—if you have charters, and confirmation of charters, and acts from time to time constituting a usage from the time of James the First to the present time, in which they stand in the situation of only taking and being entitled to that which the charters give them, to that which by usage they have taken, and that usage travels along with them throughout—I fear, my Lords, that you would be overturning every principle of law if you were to leap over all those intervening charters and usages between the time of James the First and the period when I have the honour of addressing your lordships, and say. “ Well, but in our idea the aborigines of those twelve Companies, when they paid their money, did not pay it by a perfect voluntary contribution, in the moral sense of a voluntary contribution.” I am afraid that we cannot go back two centuries, overleaping this constant, undeviating, uniform body of laws and charters, which clearly and distinctly prove that, whatever was the origin of the contribution, whether compulsory or voluntary, whether the contributors were under compulsion, or under the influence of motives of a spontaneous sort, that they have been treated as persons taking only that which the license and charters of the Company enable the Irish Society or the City of London to give them; and therefore, though I will not enter into the argument of my learned friends, that this money being raised, there was to take place some management between the Government and the City of London—I will not in detail repeat that topic of argument,—yet I will say that I think it clearly proved throughout the whole history, that those Companies had never any distinct intervention with the Government—no such thing; the City of London are the

persons throughout with whom the Government deals. I say that first, because, if the Articles of 1609 are looked at, your lordships will find that they are entered into between the Lords of the Privy Council on the one part, and the Mayor and Commonalty of the City of London on the other. The Companies do not intervene as substantive parties—the City of London is the party with whom the Government treat; and, my Lords, you will find that, when the first charter was made, the Companies had nothing to do with it: when reduced into the solemn shape of an agreement by charters, the parties are the Government or his Majesty on the one side, and the City of London on the other. They were incorporated by charter, wherein the Irish Society was styled, “The Society of the Governor and Assistants, London, of the new Plantation;” and, again, there the Companies have no election of the governors—they have no voice—they have no power of interference of any kind whatever,—a thing in my apprehension distinctly proving, that whatever they took is taken as of the grant of the Crown, or the grant of the Irish Society, or the grant of the City of London, and not a grant taken in any original substantial character upon the part of those Companies; for they do not intervene at all when the original Articles were made, nor do they intervene when the charter was made, nor does that charter give any one of the Companies (either the charter of James or the charter of Charles) directly or indirectly, any voice, interference, or intervention whatever in the government of lands, or in any character connected with the grant, or the administration of the grant, of that property. They are left out, as your lordships will perceive, in every negotiation between the City and the Government—in every charter passing between the Government and the City of London.

Then, my Lords, I go on. This charter incorporates the Irish Society and the City of Londonderry very much in the same way as the subsequent confirmatory, or rather the subsequent renewal charter of Charles—for there is no doubt that this charter of James was forfeited after this in 1625; the property was seized into the hands of the Crown in 1625. It

was then, by sentence of the Star Chamber, forfeited ; and your lordships will find a short statement of this in page 56 of the book. The charter was forfeited in the Star Chamber ; but what is more singular, the charter was forfeited by a decree of this Court ; for you will find that there was *scire facias*, which was issued, I think, in 1637, and in 1637 the charter was forfeited here. I am here passing over a date that I must come back to, namely, the license in mortmain ; but I am speaking so far as the Companies were no substantive parties to the Articles or the original charter, when they had obtained the grant.

My Lords, under the license of mortmain, they had got under those grants these lands, and they, so far as such lands were concerned, had undoubtedly acquired a fixed interest ; and consequently you will find that in 1637, when the letters patent of James had been forfeited in the Star Chamber, that forfeiture carried with it the forfeiture of the Irish Society, and also the forfeiture of the twelve Companies ; and this is the first time in which you see any notice taken of the twelve Companies. Then, in 1637, there seems to have been a *scire facias* from this Court. The City of London, the Irish Society, and the twelve chief Companies, were served with a *scire facias* to appear in the Court of Chancery. Then that *scire facias* seems to have been heard, and the forfeiture in the Star Chamber was followed up by a forfeiture in this Court in 1637, and here the twelve Companies are noticed for the reasons I have mentioned, namely, that they had at that time acquired a legal estate in the lands that had been allotted and partitioned amongst them.

My Lords, that forfeiture having taken place, the City petitioned Parliament in 1641 for a restoration of their lands : I do not know that any thing turns upon that petition. Some gentlemen have said that they were in that called trustees. I do not know who the lawyers were ; no doubt that Pym, and Hampden, and Fairfax, and other eminent lawyers of that day, were very skilful persons in deciding the question of trust ; but I do not know that there is in the petition any thing but of a general nature,—that they had been ousted by the Star

Chamber, and they prayed Parliament to be restored; and it appeared that afterwards, in 1656, they were to a certain extent restored by Oliver. Cromwell.

Now, my Lords, having put your lordships in possession of those dates, I come down to the last, upon which, by and by, I must comment a little more particularly, namely, the charter which re-established the Irish Society. My Lords, my object in giving your lordships this very short syllabus is to show you that, till the Companies had obtained these grants of land, they are never contracting parties with the Government; but, as I have taken the liberty to state, they took what was given to them, and had no right to any thing. If I am to reason upon the charters, then what was given to them in negotiation? They do not appear in the charters, but they took barely and simply that which the Crown authorized the Irish Society to give them. I have before stated, that, in giving your lordships this short summary of the circumstance of the forfeiture of these charters, I have passed over one of the intervening dates—the license to alienate in the time of James. The charter is of the date of 1613; and, unless I mistake, the license to alienate is of the year 1616. Your lordships will probably have heard, and if you have not, you will permit me to say,—that it is one of the most important documents in the case; the license to alienate is the root and foundation of the title, whatever that title be, which the twelve Companies derived in and to any portion of the lands granted out by the Crown to the Irish Society; and, my Lords, this license of mortmain, which I think was alluded to by all my learned friends, particularly by my learned friend who so very ably addressed your lordships last, was in 1616, the 13th of James. This license to alienate thus alludes to the plantation;—it is said, “that the Companies, in furthering the worthy work of plantation, begun by the Mayor and Commonalty and Citizens of the City of London, in the City of Derry and town of Coleraine, in Ireland, and other lands there (meaning the aforesaid plantation in Ulster), had disbursed, expended, and bestowed divers great sums of money for and towards the fortifying, planting, strengthening, bettering, and improving the aforesaid city of Derry and town

of Coleraine, and some part of other the aforesaid lands ; and that the said Corporations, Companies, and Fraternities, being willing to proceed in the said work of plantation, intended so far forth as to them should seem convenient, to be at further charge for the planting, bettering, and improving of other lands and tenements, by his Majesty's letters patent, granted or intended to be granted to the Society of Governors and Assistants, London, of the new plantation in Ulster, in the realm of Ireland, and for their better, more orderly, and speedier proceeding therein were desirous to have such parts of said lands as they severally and respectively intended to build on and plant, to be to them severally conveyed by the aforesaid Society."

Now, my Lords, I have here again to stop. Is this a license to grant and partition among them every thing? No such thing ; it is to partition amongst them such part of the aforesaid lands as they severally and respectively intend to build upon. Nothing like a comprehensive word,—and yet it is said that this license is to operate not only as a license to alienate particular lands, which they were to build upon, but some of the gentlemen will state, with their new skill, that they were to divide among them the fisheries of the rivers Bann and Loch Foyle, whereupon it would not be so easy to build. It is clear from this document that it does not lay down the principle, that because these Companies have laid out money, and because the Irish Society are capacitated by the Crown to grant and divide among them certain lands, therefore that this license to alienate in mortmain gives them a universal right and title, as the tenants in common, to have divided among them the whole of the lands granted by the Crown to the Irish Society ; nothing, my Lords, can be more precise and specific than the words,—“ To have such part of the said lands as they severally and respectively intend to build upon,”—a limited license in the first instance.

Then, my Lords, following up that, your lordships will find the subsequent passage already commented upon by my learned friend,—for my learned friend has anticipated a great part of what I intended to call your lordships' attention to. I shall therefore be shorter in that part in which I have been

anticipated by my learned friend, Mr. Wood; but I would ask, Was this all the land? No such thing. Here was a reserve given to the Society in respect of the lands that were to be planted, for they were "to have, take, and enjoy such and so much of the counties, countries, baronies, cities, towns, castles, manors, lands, &c. as the Irish Society shall be willing from time to time to give, grant, enfeoff," &c.; and then, again, these being the recitals in the instrument, the license goes on, in the empowering part of it, to give the Irish Society the power to make these grants; they have "full and free license, power and authority, to give, grant, enfeoff, bargain, sell, assign, alien, surrender, release, and confirm unto them such and so much of the counties, baronies, city, &c. as they shall be willing from time to time to grant and enfeoff;" and it follows it up with the clauses which are usual.

Now upon this very important document, which seems to me to be one of the principal bases upon which the claim on the other side stands, there is no word but has the opposite meaning: instead of being general, it is particular—instead of being a partition of all the property, it is only of the lands,—and that word is extremely material; and, again, it reserves full authority to the Society to give only so much as they thought fit. My Lords, I before took the liberty to call the attention of one of my learned friends to it; but this is to all intents and purposes not a compulsory direction issued from the Crown to the Irish Society—it is not mandatory, but it is permissive; they are not ordered in any part of this document to give the Companies a legal title even to a foot of land: it is to all intents and purposes a license to enable them, and not an authority and direction of the Crown mandatory that it should be done.

My Lords, this license having taken place, your lordships are aware what was done under it; the parties having taken possession under it, your lordships are aware of the forfeiture of the Star-Chamber which took place afterwards—the confirmation of that forfeiture by *scire facias* in this Court, and the restoration to a certain extent by Cromwell, in his charter; and then, at

the Restoration, you have that important document, the last in the series of those to which I am to call your lordships' attention.

My Lords, up to this time I maintain and assert, that purchasers for valuable consideration these contributory Companies were not. In support of that I have shown the negative—that they were never treated by the Crown as such in any negotiation, in any treaty, in any charter, in any act whatever; but they took derivatively from the Irish Society that, and that only, which the Irish Society thought fit to grant to them. I maintain, my Lords, under your lordships' correction, that that proposition is a proposition of fact, and is a proposition of law, and clearly the result of these documents to which I have called your lordships' attention. There is not a syllable here that the undivided property was by and by to be divided. Not only is there no direction by and by to divide what after the charter of James was left still in the hands of the Irish Society, but there is no principle laid down, no right recognised, no data established, no principle of any sort whatever, directly or indirectly, either stated or insinuated in any one of those documents—that what was retained in the hands of the Irish Society was then or was to become a subject of claim in the parties: so much, I venture to state, is vouched to me both by these documents, and all the history that attends them.

Then I come, my Lords, to that important document upon the re-establishment of the Irish Society after the Restoration. That document, your lordships know, is printed at length in the Appendix to the book. My Lords, let us look into this charter,—let us trace the title of these Companies;—they have it not up to this time. Where is your title? Under the last official Act which issued from the Government,—have you a title under that? By the ancient law you have it not;—have you it by the modern law? In the ancient charters and grants there is not a scintilla in your favour for any ultra demand beyond that which was given under the license to alienate;—how have you this ultra, this addition, this something, to which you are entitled,—which by and by is to be paid to

you,—this undivided part which is to be divided,—the unappropriated part, which you will by and by call to be appropriated? Your lordships must have seen, from this last charter, the modern and governing charter, that it does not give it; and if you look through the instrument you will find that the tenor of it withholds from the Companies,—keeps back from them even the semblance that they have a right to call upon the Irish Society for any further surplus. And why do I say that? I say that because, if you will have the goodness to look at page 14 of the Appendix, you will find that the charter of Charles, after alluding to the original charter of James, proceeds to state—"That whereas the said Society of the Governor and Assistants of London, of the new plantation in Ulster, within the realm of Ireland, by virtue of a certain license from our said illustrious grandfather, under the great Seal of England, bearing date at Westminster the 30th day of September, in the 13th year of his reign over England, France, and Ireland, and over Scotland the nine and fortieth, did grant unto the twelve chief Companies of our City of London (which had taken upon themselves the greater part of the burthen of the said plantation,) divers great quantities, parcels, and proportions of the said lands, tenements, and hereditaments, according to their several disbursements; and did retain in his own hands (which, I presume, means theirs, the Corporation being a collective body, and not an individual, and being therefore expressed to be "his," instead of "theirs,") such part of the tenements and hereditaments as were not properly divisible for defraying of the charge of the general operation of the said plantation."

Now, my Lords, surely after reading that clause, retaining the part which was retained, and keeping back in the hands of the Irish Society the income which they did keep back, your lordships will find that, in page 14 of the Appendix, not only is that not made a subject upon which the twelve Companies are to have a right of a further addition, or upon which they might form a hope or expectation of a further addition; but the charter, in distinct terms, negatives it. Instead of leaving open and undisturbed, what was to become of the income of the undivided property, this section 2, in the charter of



Charles, directly marks and distinctly appropriates this income from the undivided portion of the original grant in that charter for defraying the charge of the general operation of the plantation. And yet these dinner-haters, this Skinners' Company, say—"Hand it over, a wing to one Company and half a wing to the smaller ones; give us this." To do with it—what? That we should apply it to the general operation of the plantation? No; that they may apply it according to their own will. And yet these are the men who, in that so often abused term of reform, are complaining because 200%. or 300%. have been too lavishly expended in Corporation dinners, and asking to have it in their own hands; not leaving it a doubt whether they mean to give any part to schools and institutions, but speaking of the land as their own land, and claiming the use of the land as their own personal property, just as much as if it were their tenements in Dowgate Hill, or their lands in the county of Essex.

When I read that clause, I said to myself, as I now state to your lordships, that if in the early part of it, in taking the general history, in going through the leases and charters from the commencement of the original purposes up to the time of the license of mortmain—if it could be supposed from those that the *residuum* was bound directly or by implication, as a sort of simple resulting trust; that because in the time of James the First, certain lands are divided among them, each having his allotment; that therefore, *pari ratione*, the *residuum* should be divided in a similar ratio;—if legal doubt could say that, prior to the time of Charles the Second, such a difficulty could be raised, this charter puts an end to it, and says, that it was to be kept in hand for the general direction of the plantation.

Then, my Lords, so far as this part of the case is concerned, I have nothing to add to it. I have done with the beneficial right and title of these twelve claimants, or those forty-two claimants; for the twelve Companies claim their authority, and the forty-two claim theirs; and as to this partitioning system, though it is not for me to multiply the difficulties, it is perfectly clear that, upon the same right and title as these twelve Levi-

athans (if I may use the term) of Companies—these great sturgeons of Companies—these larger Societies,—that upon the same right and title as they claim to have a share to be let into a legal seisin of it, the smallest Companies have an equal right and title, if partition is to be made: that partition is as much a legal right and title which the smaller Companies have to enforce as the larger; and therefore it did appear to me that these should be parties. However, when this motion was originally brought on, it was to be heard for the Skinners' Company alone; and it was not till after considerable struggle that my learned friends on the other side were disposed to think that the Goldsmiths' Company, and the City of London, and every one of the twelve Companies, had an equal right to interfere in this case with the Skinners' Company, the sole plaintiffs in this suit. There are two and forty tenants in common of this land. If the principle of division is to be adhered to, there are two and forty partitionists of the fund; if, according to the strange prayer of this bill,—your lordships are to arm yourselves with the power to create a new corporation,—for that is what is prayed by the bill,—you are to put an extinguisher on the Irish Society; and your lordships are to do that which it is a novelty to hear of in the Court of Chancery—you are to constitute a new Company, and you are to call upon the Irish Society to convey to the new Company all the lands and tenements which they now hold; and then the new Company is to divide it out among this numerous class of partitionists, the twelve and the forty-two.

Now, my Lords, with this part of the case therefore, here at least I shall trouble your lordships no further. I absolutely assert, and I positively maintain, that, without this charter of Charles, the residue of this property is, by the language of this Act, explicitly made—(but before this Act the law would have made it)—a public trust for the maintenance of the Plantation in Ireland; I say the law would have made it so before, but not leaving it to implication, the last charter has so distinctly made it; and therefore by this charter, in the year 1662, the fund in question remains in the hands of the Irish Society, for defraying the charge of the general operation of the plan-

tation. By and by I must enter into the question of whether the purposes of this plantation are *functi officio*, because the topic does not quite belong either to the series of dates that I wish to preserve, or to my series of the humble arguments that I am addressing to you. Presently I will take up, and satisfy your lordships, that the existing and continuing, and necessarily continuing, sustentation, as it is expressed in this Act,—the general direction of the plantation,—is at the present moment a principle as exigent for the appropriation of this fund as it was at the moment when this charter of Charles passed. The charter says—this fund shall be applied for the general direction of the plantation. That is the language of the year 1662; and I maintain that in the year 1836 the same purpose still exists, and is as exigent as it was in the year 1662.

Now, my Lords, I have hitherto discussed the question of title; and I hope that I have successfully shown that, as to that point of a beneficial title residing with the twelve Companies, or any of them, that it is totally out of the question; and yet this bill proceeds entirely upon that. The bill does not say that this surplus shall be properly applied; the bill does not choose to treat it as the case of a continuing operation. The bill calling upon your lordships to apply this undivided income to better purposes of trust than those to which it is applied, the *meum* and *tuum*:—this is the only thing upon which this bill proceeds throughout; and I venture to say, with very great deference, that there never existed a case in which it was less possible for the ingenuity of any one individual,—whether one whose talents are here habitually, or one whose talents are specially summoned, as they must always be with great effect;—whether from the diurnal argument and ability of my learned friends, who are stationed in this Court, or that extraordinary and that eloquent and exotic talent of my other learned friend, which your lordships have heard on this occasion;—there never was a more extraordinary argument, of all the extraordinary arguments that a man ever made in this Court, than that in which this surplus is styled a mere simple trust,—that is, a sum which a trustee is to hand over and divide; and yet, from the beginning to the end of this bill, that is the whole

contention, and that was the reason why the Attorney-General was not made a party to the bill. That is the reason why the Corporations of Derry and Coleraine was not made parties; for I maintain, though there may be a difficulty in getting an Irish Corporation to be a party to a suit, that the Corporations of Londonderry and Coleraine have an interest in making by-laws, and ought to be heard here, in order that your lordships may know whether there are subsisting operations, which require the same diurnal expenses as existed in the year 1662. They are not parties. No man has been made a party in this suit whose duty and whose interest it was to appear before your lordships, with these gentlemen in Dowgate Hill, and their comrades, who imagine that they are to partition among themselves these twelve or thirteen thousand a-year. No person who had an interest in sustaining the purposes of James and the purposes of Charles, in colonizing, refining, and educating, and protecting the morals and the police of this important district of Ireland, and in claiming for this large body of persons the protection of the Court—no such person, my Lords, has been made a party to this suit, to intervene, and assert that these gentlemen have no right, nor can have a right, to one guinea of this individual surplus, till they have made out the proposition, that all the objects of the plantation are finally and absolutely exhausted; and when they are, there would still remain another claimant besides the present claimant, namely, the Crown, to be represented by the Attorney-General. Their proposition is not true, even supposing all the purposes of the plantation were exhausted, and the public maintenance of them in Ireland were so far gone that no school, no road, no hospital, no fort, no charity, no police, nothing of that public nature, could ever again require a guinea; and there was an uncalled-for surplus, and one which no future exigency could call for. Even then this Skinners' Company have forgotten their law; and I tell them that the charters would let the Crown have the surplus, and not them nor their fellows, who seem ashamed, as well they may be, of them. It would go back again to the Crown, which granted the land. The law in Dowgate Hill may be, that it may be divided amongst themselves and the other

Companies, who seem not to be fond of joining the cruise of this most extraordinary suit.

So much, my Lords, then, for their title. I before stated to your lordships that there is in this case another topic in which the City of London are materially interested—I before said that I maintain that they are the visitors and governors of this institution. To prove that, I will not recapitulate what I have said. It is enough to say, that in the articles of 1609, in the charter of James, and in the charter of Charles, they are dealt with as the sole body in whom, in the first instance, the power was placed, and who are to exercise the various duties reposed in them by the charters. Now, my Lords, I apprehend the proposition cannot be doubted, that where a body of persons name those who are to act, which is the case with this charter, (for the persons who are to become the members of the Irish Society are to be taken out of the body of the City of London; and they, in effect, name the Irish Society, although there is a direction that they shall be elected out of the body, practically in effect the Corporation of London, name the Irish Society. There may have been formerly something like an election; but in effect and truth, the Irish Society are the nominees of the City of London);—I apprehend it cannot well be doubted, in point of law, that if a body of persons name others to perform public duties, the body naming are governors over those whom they name; at least, you may frame a case differently. You might so frame a charter or a grant as that a body of persons should name another, and yet the nominee might be subject to the visitorship or governorship of a third person; but it is not so here, for the power of nomination is with the City of London—the power of motion is with the City of London; and I know of no more comprehensive principle, in which those powers of visitorship can be exemplified than in the right of the governors to name a person who is to perform a subordinate part, having the power to remove him if he does not perform that part. The power of motion (in the strongest manner in which a legal principle can be exemplified,) proves visitorship. It is so in every corporate body. Indeed it is through the power of motion that the visitatorial authority is exemplified.

Correcting abuses could not be well carried into effect without any authority co-extensive with the amotion and removal of the person against whom complaint is made.

Then, my Lords, your lordships will find in the clause in this charter, to which I think you have been referred;—in page 22 this power is granted—“ That they and their successors for ever, by the name of the Society of the Governor and Assistants, London, of the new plantation in Ulster, within the realm of Ireland, be and shall be at all future times persons able, and in law capable to have, purchase, receive, and possess lands, tenements, goods, chattels, possessions, liberties, privileges, rights, jurisdictions, franchises, and other hereditaments whatever, of what kind, nature, or form soever.” And then, in page 24—“ And if, and as often as it shall happen, any one or more of the said Society of the Governor and Assistants, London, of the new plantation in Ulster, within the realm of Ireland, shall die or be removed, or depart from his or their office or offices, all which and every of them not well behaving him or themselves in their offices, we will to be removable and removed at the pleasure of the Mayor and Aldermen, and of the rest of the Common Council of our said City of London, or the greater part of them.”

My Lords, tracing this a little further, if it should be necessary, your lordships will see what the Irish Society are to do: they are to have a Court or meeting:—“ And also in the same Court or meeting may have full power and authority to direct, appoint, and ordain for and on the part of the Mayor and Commonalty and Citizens of our City of London, in our kingdom of England, all and singular things which for or concerning the plantation, supply, establishment, continuation, and government of the said city of Londonderry, and of all other the lands and tenements hereunder in these presents mentioned to be granted, shall seem most profitable and expedient.” Those words are extremely remarkable. The Irish Society are to direct, appoint, and ordain by-laws for and on the part of the Mayor, Commonalty, and Citizens of the City of London; and in another part of this charter, your lordships will find that the city of Londonderry are required, from time to time, to

send up by-laws to be approved of by the Irish Society. The Corporations of Londonderry and Coleraine are invested under these charters with a local power of making by-laws and regulations; but the by-laws which they make are to be transmitted to, and are subject to the revision of, the Irish Society in London; and this Irish Society are to act for and on behalf of the City of London, being named by them, and visited by them, and liable to be removed in case of misbehaviour. A more direct and positive, and more precise constitution of the character of visitors, I know not, nor have ever met with. I need not, I am sure, remind your lordships that the term visitor carries with it all the powers incident to the office of visitor; one of which is the power of amotion. If you specify the powers that infer the character of the person who is to perform the part of visitor, the specification of the powers to be exercised carries with it, as an inferable consequence, the character of the persons who are to exercise those powers; and a more perfect establishment of a visitatorial character than that reposed in the City of London, I apprehend it is impossible in law to imagine.

Now, my Lords, having called your lordships' attention shortly to that, I am very loth to occupy your time with any superfluous argument. I must, however, state the fact,—these gentlemen are to account. Has there been any complaint made to the City of London that the Irish Society are improperly passing the accounts, or that the Irish Society are causing expenses which are not proper? No such thing; in the whole of this voluminous record, by which their authority is to be superseded as visitors—and I will not trouble myself with the very nice question of what is to constitute a case where the Court of Chancery, or a Court of Law, will deprive persons of the character of visitors; but I must ask this of those who are to pull down the Irish Society—To the governors of the society have you complained against the Irish Society of a breach of trust? Have the governors of this institution ever been resorted to? Not only is the contrary the case; but it is singular that in this strange and extraordinary record no syllable is ever mentioned upon this subject.

It is not surmised that the City of London have ever been complained to upon the head of any improper expenditure in that which constitutes the debtor and creditor account. I apprehend, if you go to another tribunal upon a complaint, when a complaint is made against any society, the question is, Have you been before the visitors? No; because they have thought fit to treat it as a case of private right;—and the record is so far consistent with itself, consistent with its own folly, consistent with its own perversion of the fact, consistent with the strange case they have put upon it. To be sure, if they treat this not as a continuing trust for the public purpose of the plantation; if it is true that all the purposes of the plantation are *functi officio*, and it is reduced to the residuum of which they are naked trustees, you need not go to the City of London to put any question whatever to them, because it is a question between A. and B. as to B. the trustee, and therefore it is consistent that the whole circumstances should be kept in the dark; and, therefore, it is that they keep totally out of view the continuing purposes of the trust. Whether the City of London have countenanced an improper application of the funds,—the purpose which does not properly belong to the plantation,—that is not their ground; but they leave that case totally out of sight, and reduce it into the position of the mere simple complaint, as to the sum of which these parties are trustees.

My Lords, under these circumstances, therefore, it is perfectly clear, from the language of this charter, in Charles the Second's time, that that charter, in its language, deals with this plantation as a public trust then subsisting, and to subsist. There are two corporations made in Ireland, who have the local government in Ireland; their by-laws are to be regulated by the Irish Society; and, therefore, instead of this being a charter from which you are to infer that the purposes of the plantation ceased, the contrary is the case: for this charter supposes a continuation of the plantation, and of all those powers which are from time to time necessary to be applied to the maintenance and keeping up of the beneficial purposes introduced into the original plan of the plantation.



Therefore, my Lords, this charter, instead of assisting that object, and showing that the purposes ceased, and that the private right of the Companies has upset the public, the whole tenor of the charter speaks the contrary.

But, my Lords, that is not all : I am coming now to state—(and it is almost the last thing)—that they have thought fit to suppose there is no subsisting charge upon this undivided fund except the 250*l.* paid to the Bishop of Derry, and 200*l.* paid to my Lord Strafford, the present governor of the fort of Culmore. They treat this as being without any other outgoing but these; and they say, “ We will pay the governor 200*l.* and the bishop 250*l.*” Now I am not certain that some of those Companies have not a kind of wish to become Bishop of Derry, to get the 250*l.*; that might be more difficult, as they could not become bishops; but very likely one of those wardens might become governor of Culmore Castle; and I do not see why they should not; they have as much right to that as they have to make the present application. I do not see why the warden may not go down to the river at the bottom of Dowgate Hill, and be landed at his castle at Culmore. They have as much right to that as to the other property of which they seek a division; but, says this bill, “ the only subsisting charges to constitute a drawback, are those payments to the Bishop of Derry, and to the governor of the fort.” I do not know whether your lordships have been furnished with a list of the annual sums which are expended upon this exhausted plantation for its religious government, its civil government, its moral government, its literary government, its police government, its agricultural government; for all those beneficial purposes which constitute the progress, and which, in short, are not only the element, but the perfecting branches of every civil institution. You would suppose that every body was so rich that a guinea more was not wanted. You would suppose that all the children in this place were so proficient in arithmetic and in languages, that an instructor was not wanted. You would suppose that education had worked out all its offices; that charity could never be called upon to unlock its purse; and that the whole thing was such a Utopia, that it was

impossible by money, civilisation, or instruction from day to day, to add any thing to the accumulated mass of civil improvements which this province had attained:—that is one of the light theories which has entered into the brains of one of those Companies. They imagine that all those purposes are completely effected, and that, therefore, this money has become a *caput mortuum*; and why, say they, should we not share it for our purposes, as not being wanted for the purposes of this trust? So argue the Skinners' Company; let us see how the Irish Society have disposed of this money.

Mr. LLOYD.—I have not seen that paper which you are now producing: there is a document which we have produced; I do not know whether it is the same.

Sir CHARLES WETHERELL.—It is the same in substance, except that this is for the year 1835. Let us see what purposes still exist. The Bishop of Derry, 250*l.*; the Corporation of Derry, 83*l.*:—they have municipal government not exclusive to them, but entirely under the orders of the Irish Society, who may confirm or supersede the by-laws:—the governor of Culmore Castle, 200*l.*; then there is the quit-rent and the county cess,—I suppose that there is still a county; one would almost suppose that Londonderry had somehow met with the same fate as New York has met with. Probably the liberality of the gentlemen at Merchant Tailors' Hall,—if it should so happen that a fire took place there, I presume they would admit that those funds of the Irish Society would still be applicable to rebuild those places, because the county itself derives sums necessary to carry on that provincial government. Then they go on next with schools:—the diocesan school, 115*l.*; the master, 38*l.* 9*s.* 2*d.* The *Penny Magazine* is a very good thing, no doubt; I dare say that it has done a good deal under very high auspices—contributed to by very high persons—diffusing streams of intellect; and here you have a diocesan school and you have a presbyterian male school, 20*l.*, an infant school, and so on—so that you have education going on from the lisping infant up to the great, stout, brawny-armed Irishman, with a correspondent vigour and intellect, and impartially administered. I find the Presbyterian

and diocesan school are impartially dealt with in the stream of instruction. What will the march-of-intellect men say to an order made in the Court of Chancery, by which all this march-of-intellect work is to be suspended, and those funds (save 250*l.* to the Bishop of Derry, and 200*l.* to the governor of Culmore Castle) are to be handed over among those Companies?—against whom I recriminate. Without knowing what takes place at Skinners' Hall and Fishmongers' Hall, and other places at the Court, it has been said and surmised, that the knife and fork are implements which have not been entirely banished from the domicile of those places—that such a thing as a repast has been most liberally served up in those institutions,—and most properly too. My Lords, it would be a mockery to bring the Attorney-General here in such a case, for Sir John Campbell would state to your lordships, or my learned friend, the Solicitor-General, would say, that he had not a moment of time to waste. These gentlemen are to contend, as they have contended, and as they have asserted by their bill, that all the municipal and public purposes in this branch of Ireland, in all these respects, are over, and that the money is theirs to spend, and to do with it what they think fit. So much for Londonderry. Then comes a similar catalogue for Coleraine: in the two together, schools constitute an annual sum of 920*l.* a-year.

Mr. WIGRAM.—What year is that?

Sir CHARLES WETHERELL.—For 1835.

Mr. WIGRAM.—You do not go later than 1833 in your Answer.

Sir CHARLES WETHERELL.—Then I will take 1833. I before stated that the purposes of education are not quite exhausted; the readers and writers of this place are not so perfectly accomplished that schools are not wanted. You have under the next title, "Charitable contributions in Ireland," which amount annually in Londonderry and Coleraine to 995*l.* a-year. I am taking this as a more convenient mode of reading it: I do not say that the sums are the same, but they are nearly the same;—those are the two heads. The first is the head of permanent payments, quit-rents, &c. &c. and county and

municipal expenses ; secondly, comes the head of education ; thirdly, comes the head of charity—and there are incidental expenses ; and then comes another, a very considerable one, the Corporation of Derry ; for they support the magistracy, and give to them 930*l.* a-year. I presume that the continuance of magistrates is a thing not utterly unnecessary in Ireland ; I have not read any of the chronicles lately, any that have been steamed over from Cork or Belfast, but I presume that the magistracy is still a continuing necessity in that country, the expenses of which are 900*l.*, and the law expenses 1000*l.*—that applies to the fisheries of the river Bann. Your lordships know that, ever since the time of Yelverton, the fishery of the river Bann has been the subject of contest :—I believe the most lucrative fishery in the United Kingdom is that which is vested in this Society, on the coast of this county, and the river which runs into it ; I believe that it is superior to those in Scotland. Then there is a small sum for the attendance of members, and the balance in favour of the Society, which is deposited in the Bank of England, of 7122*l.*

Mr. WIGRAM.—Will your clients give us copies of these ?

Sir CHARLES WETHERELL.—I make it as a part of my speech—there are certain things of which the Court, to use a phrase known here, will take judicial notice. Your lordships will take judicial notice that there are poor people in Coleraine and Londonderry, that the people in those counties are not more learned than they are in all parts of England ; and your lordships will take judicial notice that counties and towns must have various police expenses. Your lordships will take judicial notice, that a colony, in analogy with the British constitution of government, must have from time to time various necessary and unavoidable expenses ; and those expenses, as I state, constitute a very large sum, leaving the balance the surplus of this property.

I beg pardon of your lordships for having taken the liberty of occupying your lordships' time ; but I have performed a task which I would not have attempted unless I thought it might be of use in presenting to your lordships a short and, I presume to state, an accurate syllabus of the main facts in this case ;

and the result of the whole of it is, that it is a thing unheard-of by the Court, unprecedented, and beyond its power, to extinguish a body of persons (as is proposed to be done here) barely because it is said some hundreds per annum have been improperly expended in portraits, in plate, and in entertainments. I apprehend, that if it could become a question whether the City of London has properly or improperly placed a monument in their splendid and hospitable hall to my Lord Chatham, or Alderman Beckford, or the various other magistrates who have shown able conduct in the chair, or to any great and eminent persons, who, in the opinion of the citizens of London, were worthy of it, and thereby have promoted and perpetuated the principles of those eminent persons,—I suppose you are not to have a Receiver put upon the City of London, because persons might ask where the power was to erect those monuments; and by parity of reasoning, if there are eminent men, whose portraits some painter (either Lawrence or Reynolds, or some other not so eminent,) may have hung up upon the walls of the office of the Irish Society, that this is not to be made a reason for taking out of the hands of this body 14,000*l.* a-year, 12 or 13,000*l.* of which must be expended unless this plantation is to be thrown back again into the former barbarous state, which is the theory of those march-of-intellect men. Never mind how many charitable institutions are not kept up; never mind what breaches of the peace take place; never mind what roads are unrepaired; never mind, say those march-of-intellect men, how many retrograding steps this colony may take;—ours is the supervening and superseding title; we have a right to have all this money in our hands, and out of it the sum of 250*l.* a-year is the only charge which we may recognise as the existing one, and consent to pay. And your lordships are called upon by this extravagant record to turn out of possession the Irish Society upon this idle and contemptible ground, because their tavern expenses are too large, and because portraits are hung up in their hall, and some other gratuities have been given, or because some prime warden (who may have benefited the revenues) shines in a gilt frame, or because some able member

who confers services upon those bodies may be treated by having his portrait hung up, in order that his good deeds may be perpetuated, and excite a spirit of rivalry in some other prime wardens. No: they say—There is a piece of plate given to one man, and too large a tavern bill paid at another place;—and this is sufficient ground to overturn the whole Irish Society, to dispossess the body of this receipt of 14,000*l.* a-year, the overturning of which, and the dispossessing them of which, will be attended with mischiefs beyond calculation for any man to point out; or the other alternative, I suppose, is this, that they are to be paid into the hands of the Receiver, and that the Receiver is to do—what? To go on continuing such payments as may be deemed necessary within the language of Charles the Second; for either it must be an order to receive generally, and a new qualification must be put into the order directing the Receiver to receive the whole rents, and pay the bishop and the governor; or the other form must be—unless your lordships are to stop up the source of charity and benevolence, this municipal government, and paternal government over the whole of the province—the other alternative must be, that the Irish Society are to be put out of court at once, and the Receiver to take the whole rents, and defray out of his receipts such sums as shall be necessary for “the general operation of the said plantation,”—for those are words which are as pressing at the present moment as they were two centuries since, when the project of cultivating and benefiting this province was originally formed and designed by James the First and his able ministers.

My Lords, it is under these circumstances, that for the City of London I beg leave to state, for them and for the Common Council of this City, that they, as strongly and as pointedly as any persons, deprecate the notion of any thing which is a breach of trust, or which is extravagant. For them I beg leave to state, that in the whole history of this business those subjects never have once been made to them a complaint. It has never been once stated, either in the Common Council, in their meeting, or in the meeting of the more enlarged City of London,—though I cannot enter into the proper mode in

which the complaint should be made—that I will leave to my learned friend the Recorder—neither the Common Council nor the corporate body of the City have been complained to as to the items of this expenditure; and the only questionable one is the plus and minus of those hospitable entertainments, with respect to which I should beg to make it a sort of question—Whether, if one was to file a cross bill, asking the Skinners' Company whether they could not go down to Tunbridge School once a-year for less than 200*l.* to examine the boys in Ovid, or in Euclid, or in Æschylus, or in some of those *deliciæ*;—and, no doubt, those visitors from Dowgate Hill delight in making a country visit, and an equally refreshing literary visit, feeling their intellectual powers invigorated by all those learned and literary improvements which are taking place in that asylum of classical education; no doubt great must be their delight at seeing literature prosper where they are patrons;—but 200*l.* a-year? Why cannot you all go down in your own carriages?—do not you keep carriages?—Mr. Prime Warden keeps a carriage. What is the use of all this tavern bill down at the Red Lion at Tunbridge, or the White Hart at Seven Oaks? I believe they make a progress down there. Cannot you go down to the place; and instead of having a dinner there, why do not you give it in books? Why do not you give the first class a splendid prize? and another, a Cicero or a gold medal? Why do not you have your senior optimes and your senior wranglers? You complainers of this hospitality, can you find nothing better to bestow your 200*l.* a-year upon than in having viands served up at Tunbridge or at Seven Oaks, or wherever you go down?—Is there nothing among your Reformers,—you who complain of the Irish Society, who are meeting day by day to manage 14,000*l.*—who have well earned the confidence reposed in them,—who have never been complained of any where,—who have carried this province to that prosperity which no other part of Ireland has attained,—who have improved that part of Ireland so as to become a standard and a desideratum, which other persons are looking at and wishing that other parts of the country might be raised up to the same state of improvement?—The fault, and the only

fault that those haters of entertainments make is, that 200*l.* is a better sum than 500*l.* for the hospitable meetings of this Society, though those gentlemen, by some scale that we cannot find out, do not seem very much ashamed at taking 200*l.*, which I should say (*pace tantorum virorum*) is not necessary, and might be applied to purposes more useful than it has been applied.

My Lords, under these circumstances it is that I hope that your lordships will dismiss this motion with costs. I do not, as I before have taken the liberty to state, enter into the question (which for this purpose would be unnecessary) what are the cases where a visitor who will not do his duty is liable to the control of the superior Courts, to compel him to do his duty. Your lordships are aware of the statute, that places are not to be visited when there are governors and visitors. Cases may exist where visitors themselves may be dealt with, if they will not perform their duty; but you are here to annul the Irish Society, and annul the City of London, to strip them of the whole of their authorities. The body who acted for the City, and the City who acted by them, are to be entirely extinguished from the whole control and management of this charitable or public institution; and these revenues are to be committed to the hands of the Receiver, who is either to be directed, or not to be directed, to apply them as they have been. If he is not to be directed, then you will proceed upon this extravagant, fictitious, or imagined notion, which those gentlemen have had infused into their brains, an idea imbibed in some of those feverish moments, from which the public judgment is fast recovering; they have fancied to themselves, in this frenzy and this fever, that there were no such places as Coleraine and Londonderry, that there were no such things as continuing trusts, and that the whole of this fund, land, and residuum, amounting to 13 or 14,000*l.* a-year, was applicable to their own use. Either your lordships must take the money out of the hands of this body, without directing how it is to be applied, or direct the Receiver to go on with those payments, and then you would look to the principle upon which



it stands ; because if it should be conceded that their incidental expenses should be cut down from 800*l.* to 400*l.* a-year, and by and by some taxing-master should say to the Skinners' Company—You get 200*l.* and the Tunbridge tavern bill is to be the barometer, I am very much disposed to think, that the measure of meat and drink which they have meted out to themselves in their character of governors of the Tunbridge School, would upon the same principle prove that the incidental charges of the Irish Society are not beyond the same scale, under which those parties have taken 200*l.* for this delightful though not very useful visit. But your lordships, because tavern expenses have been too large,—and that economy would reduce those expenses to a leg-of-mutton principle, a leg of mutton and turnips (which I do not object to,—I state it seriously, but then I must say to the gentlemen, you have not acted upon that principle,)—if that is to be the whole extent of the tavern expenses to be served up, and I am to suppose that your lordships, or any one who has heard this case judicially, may say, “ We are of opinion that those incidental expenses can be cut down ”—I should be very glad to hear upon what principle it is to be said that those institutions which have been well administered in ninety-nine cases out of a hundred (for there is no pretence for saying that the money for the plantation has not been most strictly applied), because one item may be cut down from 500*l.* to 200*l.*, and a painter shall never hang up the portrait of a man, but for the future there shall be a lower scale of those expenses ; I should be glad to hear my learned friend who comes here state, that because in this single item there may have been extravagance, your lordships are immediately to extinguish the rights of both the bodies—the City of London, against whom complaint has not been made, and the Irish Society ; and you are called upon by this interlocutory motion to do the same thing as if your lordships had heard the case through and been called upon to decree that the sum is too much. I will suppose the case regularly heard,—but it could not be till Sir John Campbell is heard, or till the other Societies are heard,—but I will suppose

that every thing had been regularly proved before your lordships—what decree could you make? There is not a word in this bill complaining of any other expenditure. They drop the continuance of the trust, they banish the idea of a subsisting continuing public purpose—that is left out of the bill; and I will suppose that every thing has properly passed in this debate, what other decree could your lordships make than to inquire whether the sum of 500*l.* or 600*l.* a-year was a sum too large, or whether a part of that sum in point of expense could or could not be reduced?

My Lords, it is upon these grounds, without troubling your lordships further, that I have entered upon the office, which I trust I have not done without utility, of presenting a short analysis of this case. I can only put it to both of your lordships, especially the noble lord who now presides in this Court, whether he ever heard of a motion for a Receiver,—which is in fact to do more than your lordships could do upon a hearing? I maintain that, upon a hearing, the Court would go no further than make it a question for the Master, whether those expenses were too much or too little. Yet you are now called upon to displace the governing body, the corporation of the Irish Society, upon this bare, solitary, and, I take the liberty of calling it, absurd speculation of the Skinners' Company. The whole of this system is to be overturned because a tavern bill has been incurred annually of the amount which might by persons less highly fed than the Goldsmiths and the Fishmongers, be considered extravagant; very likely they might be contented with a tavern dinner upon a reduced scale. On the part of the City I beg leave to state, that when any complaint is made to them of any thing inconsistent in the proceedings of the Irish Society, they will deal with it as governors and visitors of the Irish Society; but from the manner in which this proceeding has gone on up to the present moment of time, I hope that your lordships will dismiss with costs this tyrannical and uncalled-for attempt of the Skinners' Company, which is, without argument and without inquiry, in the fever of reform, to put an end to the Irish Society.

LORD CHANCELLOR.—We cannot proceed any further with this to-day.

Mr. WIGRAM.—May I ask whether your lordship will go on with this to-morrow?

LORD CHANCELLOR.—Yes.

*[Adjourned till to-morrow Ten o'clock.]*

*Wednesday, 17th February, 1836.*

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Mr. RECORDER.—My Lords, I have also the honour to appear as counsel in this case, instructed on the part of the Corporation of London to resist the present application made to your lordships on behalf of the Skinners' Company. That application may be briefly stated to be, "that the Irish Society should pay into the Bank, to the credit of this cause, the present balance in their hands; that a Receiver should be appointed; and that the Irish Society should be restrained by injunction from further collecting and getting in the rents and profits of the said estates, or any part thereof."

My Lords, the Corporation of London claims to stand in the relation to the Irish Society of Visitors of that Society, and to be in the condition of visitors, to whom no complaint of alleged abuse has been preferred, and whose powers have not been called into action for the redress of alleged grievances, or for the removal of the members of the Irish Society, misbehaving themselves in their offices. This ground has been already preoccupied by my able and learned friend who has immediately preceded me; and in trespassing further upon the attention of the Court, I am fully aware that some apology is due from myself. I am quite confident that the principles upon which the decision of this question must ultimately proceed, and the historical details in which the original formation of the Irish Society, and its subsequent transactions, are involved, have been fully drawn to the attention of the Court, and in a manner to leave little, if any thing, to desire or hope for from those advocates who may be under the disadvantage

of following the learned counsel who have hitherto claimed and possessed the attention of the Court. But I trust, my Lords, that I shall stand excused to the Court in trespassing still further, but shortly, upon its attention. The peculiar relation in which the Corporation of London stand to the Society; the public trusts which that Society, under the visitatorial power of the Corporation, is called upon to administer, require that the officer of that Corporation should not, by his entire silence, appear to discountenance the observations which have been so ably made by those who have preceded him, or to abandon the case when, in their character as visitors, they are called upon peculiarly to administer to the utmost of their ability the trust which the Crown reposed in the Corporation of London.

My Lords, your lordships are aware that the Corporation of London, in the terms of the charter, elect the members of the Irish Society; that they are elected from the members of the Court of Common Council; that the Corporation of London, acting through the Court of Common Council, have the power to remove those who may misbehave themselves in their offices. The terms in which the Corporation submit that they are visitors of this Society are these:—"these defendants submit that the discretionary power as to what acts are or are not requisite to be done, in pursuance of the said charter, is vested in the said Irish Society, subject, as these defendants admit, to the superintendence and control of these defendants. That the charter of his Majesty King James the First, as also that of his Majesty King Charles the Second, give to the Corporation of London, in Common Council assembled, the power to remove at their pleasure all or any of the members of the said Irish Society, not well demeaning or behaving themselves in their offices."

My Lords, I should submit that it would be impossible to state more fully that they claim to themselves the capacity of visitors over the Irish Society. It has been held in a variety of cases, with which your lordships are familiar, that the power of removal may be said to involve every other power that can be exercised by a visitor. I shall by and by very briefly

advert to some of the dicta of the learned persons who have filled the situation which your lordships have the honour to fill, in this respect ; at present I content myself with the general proposition—that, in the terms of the claim made by the Corporation of London, they claim to themselves expressly a visitatorial power ; and I would preface any observations I may hereafter be called upon to make in respect to the cases to which, most briefly, I may call your lordships' attention, that, whether this peculiar Society may, in your lordships' judgment, or not, be strictly termed a Society which has the administration of charitable trusts, still, that the cases upon the subject that refer to charitable trusts are of a nature, at least, as I most humbly submit, to inform the judgment and guide the discretion of the Court, in the application of those principles upon which this present application must be determined.

My Lords, I have already suggested that your lordships are fully in possession of the historical details of this case,—and there are many things, therefore, which, having been abundantly proved, I may take for granted in my argument. In the first place, the Corporation of London were the original undertakers, at the express desire of King James the First. This is stated by the defendants in these terms :—“ It appears to these defendants that the said Corporation of London were the original undertakers of the said plantation, by the express desire of his Majesty King James the First, and that they were the Body in which his said Majesty reposed the duty of carrying his great and paramount object into effect, and in which he confided the trust of managing the same, in such mode as they should think best, and most conducive to the permanent establishment and lasting preservation of a Protestant settlement ; and they were, as these defendants believe, to have the sole control over the raising and expenditure of all monies necessary for establishing the said settlement or plantation, and over all monies to be derived by way of profit therefrom, and were to have civil jurisdiction for preserving the peace and regulating the trade thereof, and were, in all other respects, to direct the affairs of the said colony. That the Corporation of London did in fact exercise

all such powers and control as aforesaid, until the creation of the Irish Society by the Committee, of which the Irish Society is but the substitute, as hereinafter mentioned, and to which Society, elected by the Common Council of London, as is hereinafter mentioned, the greater part of the said powers were given by charter, subject, however, as these defendants submit, to the direction and control of the defendants in their exercise of such powers."

Now, my Lords, in furtherance of that allegation, your lordships' attention has been called to the fact, that the Corporation of London, by their own act, raised the requisite funds for the plantation of Londonderry. The mode to which they resorted was the raising of the funds, not out of the corporate funds of the respective Companies, but "by way of Companies," or through the medium of Companies, by the taxation of individuals by the poll. The funds were supplied by individuals,—the Companies have had the full benefit of repayment, either in the shape of land, or otherwise, of those monies originally obtained from the individual members of the respective Companies. Your lordships will be aware, that, under the precept issued by the Court of Aldermen, individuals were summoned to assemble in the respective halls of their Companies, and were taxed according to their ability and disposition, to contribute, in furtherance of the proposals made by the Government to the Corporation of London. And, my Lords, the Companies received the lands that were originally allotted to them by the act of the Corporation of London. The mode in which the several lands were allotted has been drawn to your lordships' attention. It took place in the Court of Common Council of the City of London; they were drawn by lot,—it was the act of the Corporation of London,—they were the directing parties to the conveyances which followed; and when the charter was established, and when the charter was renewed, in the renewed charter of King Charles, the Irish Society were made the means of reconveying the property which had been forfeited at the time the first letters patent were annulled.

But, my Lords, I submit to your lordships, upon the whole

facts of this case as laid before you, that it is abundantly clear that the Companies took even such portions of land as were allotted to them, subject to the public trusts and general objects of that plantation.—And here, my Lords, I would remark, that this division took place, as is originally stated and afterwards recited in the charter, subject to considerable reservations of rights in furtherance of the objects of the plantation, with reference to timber and a variety of other matters; and that the Companies were called upon afterwards by precept. When the Corporation of London was troubled by the Government in respect of their alleged negligence in forwarding the objects of the plantation, the Society issued a precept to the Companies, and the Companies were required to account to the Irish Society with regard to the steps they had taken, according to their respective means, upon the property which they held in furtherance of the objects of the plantation.

My Lords, perhaps at the risk of some irregularity in point of order, it may be convenient for me to draw your lordships' attention to the mode in which the Corporation has acted throughout in reference to this subject. Your lordships will find that, under the charter, the Irish Society are deputed to act for and on behalf of the Corporation of London. The terms are these—"And also in the same Court (page 25 of the charter,) they shall have full power and authority to direct, appoint, and ordain, for and on the part of the Mayor, Commonalty, and Citizens of our City of London, in our Kingdom of England, all and singular things which, for or concerning the plantation, supply, establishment, continuation and government of the said city of Londonderry, and all other the lands and tenements hereunder in these presents mentioned to be given, shall seem to be most profitable and expedient." I call your lordships' attention to that passage, because your lordships will perceive that the terms used are the terms of incorporation of the City of London—"the Mayor, Commonalty, and Citizens;" and that the power which the Mayor, Commonalty, and Citizens, are to exercise, is a power to be exercised in the Court of Common Council; and therefore your lordships will find that the charter uses a different mode of expression when the subject of appoint-



ment of the members of the Irish Society is mentioned,—when their removal is mentioned, and when the party on whose behalf they act is mentioned,—different expressions are there employed. They are to act for the Corporation of London—for the Corporation of London, the original undertakers and contracting party with the Crown ; but as every corporation must act by some limited body, the body through which the Corporation at large can act, is through the Court of Common Council, in which, as your lordships are aware, are assembled the Mayor and Aldermen, accompanied by their officer, as part of the Court of Aldermen, the Recorder, and by the Court of Common Council—the Court of Common Council, commonly called “ the Commoners of the Court of Common Council,” being the individuals selected in the respective wards of the City : therefore the original contract with the Crown is never lost sight of. The acts to be done by the Irish Society are acts to be done for and on behalf of the Corporation ;—the Corporation, acting through the Court of Common Council, possess, as we allege, that visitatorial power, which is implied—first, in respect of the fact, that whatever the Irish Society do, they do on behalf of the Corporation ; that whoever the Irish Society are, they are created through the Corporation, acting in the Court of Common Council—they are elected and nominated there, and, misbehaving themselves in their offices, they are removable by the Court of Common Council. I submit, therefore, to your lordships, that it is abundantly clear that the Irish Society are, in the terms alleged by the Corporation of London, under the superintendence of the Corporation of London, and that the means of exercising that superintendence is through the medium of the Court of Common Council, by their appointment and by their removal.

Now, my Lords, your lordships will recollect that the present existing Irish Society is but the substitute of the Committee of Management originally appointed by the Corporation. In the contract, therefore, between the Crown and the Corporation, the Crown and its charter has never lost sight of the exercise of the power of control at present claimed by the Corporation

of London. A Committee was formed, consisting precisely of the same component parts, for the management of the affairs of the plantation, which, in the terms of the charter, are incorporated for the purpose of administering those trusts, with the same number of Aldermen, the Recorder, and the same number of Commoners; and for the purpose of facilitating the objects, and managing the trusts of this plantation, these same parties are incorporated in the terms of the charter. Nothing can better illustrate, as I should humbly contend before your lordships, what and for whom the members of the Irish Society act, than the fact, that they are nothing more or less than the same Committee—a Committee of the Court of Common Council, appointed by the Corporation of London, incorporated, in the terms of this charter, to exercise and perform precisely the same public duties and trusts which were originally confided to them by the sole act of the Corporation of London. Your lordships perceive, therefore, that the Irish Society emanates from the Corporation of London—that the individual members of the Irish Society are members of the Court of Common Council. All the Aldermen are members of the Court of Common Council; the Governor, who is to be an Alderman, is a member of the Court of Common Council: the only officer who has no voice in the Court of Common Council—the Recorder of the City of London, but who is a part of the Court of Aldermen, and therefore a part also of the Court of Common Council—is retained. The Corporation send their own legal adviser—the same individual at whose advice they are content to act in matters concerning their Corporation—to be a part, to be an assistant, to be one of those who are to advise, and to have a control in the administration of the trust reposed in the Irish Society. The parent Corporation sends a certain number of its Aldermen; it nominates one of those Aldermen a governor; it sends the same adviser by whom it acts itself to take part in the proceedings of the Irish Society; and a selection of other members of the Court of Common Council are associated with them, to make up originally what is nothing more than a Committee of the Court of Common Council, with the advice of the Recorder, and which becomes,

in the terms of the charter, an incorporated Society, consisting precisely of the same parties.

Now, my Lords, as before, although generally for the administration of the objects of the plantation, a large discretion is reposed in the Irish Society; the same particular restraint which the Corporation of London exercised over the members of their committee they exercise, precisely in the same manner and form, as it respects the members of this incorporated Society. The same power of nomination of the Committee, and the same power of removal, remain to the Corporation in the altered form of this Irish Society, emanating from the parent Corporation, that of London. And yet, my Lords, in the face of these facts, it is contended on the other side, that the Irish Society,—and I think I have taken the precise words employed,—is the mere agent of the City and Corporation of London; and that the Society had admitted itself the mere trustee of the twelve Companies. And, in support of this, they have further alleged, that the occasions are numerous where the City and the Irish Society record themselves as trustees for the twelve Companies; and then they say, as a corollary from these propositions, that there is a trust as to the application of the revenues, and that this Court has of course jurisdiction to compel a due application of such trusts; and that the case of a Corporation (which I am perfectly prepared to admit when it is in fact a trustee,) is the case of an individual; and they have drawn from all these premises the conclusion, that the present application for the appointment of a Receiver, and the payment of the money into the Bank in this cause, and suspension of all the powers of the Irish Society, in respect of the funds hitherto administered by them, should be determined in the affirmative.

My Lords, my learned friends on the other side, as it appeared to me, followed a most wise and discreet course. They exactly laid before your lordships so much as would give to the character of this Society that also of private trustees, of mere holders of property for, and on behalf of the Companies. They did so wisely, because that alone could form a foundation for the general prayer of this bill; amongst other things,

for the partition of these estates, which they claim to be theirs, and which, they allege, the Irish Society hold in the simple character of trustees;—and they urge that your lordships are at liberty, looking at this as a case merely of private trust, at the request of those who were interested in that trust, being dissatisfied with the management, to direct that new trustees should be appointed; and that, in the meantime, a Receiver should be appointed, and the functions of the original trustees entirely superseded.

My Lords, there is a great novelty in this application. No doubt there would be something of novelty in any application in reference to a Society so peculiarly constituted in the terms of the charter, and according to its original formation; but the great novelty of the application is this,—that whereas, in a Court of Law, through a *mandamus*, the Court is often called upon, where the remedy is circuitous or difficult, to apply a particular remedy in furtherance of the objects of his Majesty's charter, or whereas this Court is equally called upon to act in affirmance of public trusts, and in furtherance of the objects of charters; the present application is to lose sight entirely of the original objects of the plantation, and the purposes for which the charter was granted—to deal with it as a private property; and applying the principles applicable to a private trust, to make partition of this property, without reference to the terms upon which alone the Crown conveyed this property to the subject.

Now, my Lords, I should humbly submit to your lordships, that to remove the Irish Society from being Trustees (if such they can be called,) is to usurp the powers of the charter, which the charter has expressly conferred upon the Corporation of London in their character of Visitors of this Society. The law is not silent in whose hands the power of removing the trustees shall be placed. It is a part of the gift and condition of the charter, that if the officers of the Irish Society misbehave themselves in their offices, a precise remedy is afforded in the terms of that charter—the Corporation of London, in the Court of Common Council, being by the Crown itself appointed judges of that misbehaviour, with a power to remove at their pleasure, wherever it shall appear to them that misbehaviour has been

committed. They have the power to remove—nor is their power limited to that—but they have the power to appoint others in the place of those whom they so remove. If those who are in the execution of the public trust, in furtherance of the contract entered into by the Corporation of London with the Crown itself, shall be found to have misbehaved themselves, the power resides with the Corporation of London to remove such parties, and to substitute others in their stead. But the difference of the application to your lordships is, that my learned friends most wisely avoided the terms of the charter, so as not to act in compliance with the charter, even if you should be persuaded to usurp the functions of visitors reposed by the charter in the Corporation of London. They do not ask your lordships to remove the members of the Irish Society, and to appoint other aldermen and other members of the Court of Common Council, which is then to go on as a newly-created Corporation of the Irish Society; but to displace (acting in that respect according to the powers granted by the Corporation of London,) the alleged offending parties, and not to substitute, in the terms of the charter, persons of the like description, who alone by the terms of the charter are to be substituted; but to transfer to the Companies, or to some one of the Companies, or intermediately to a Receiver, an officer of this Court, all the powers and functions defined by the charter, and expressly committed to the Irish Society and their successors; such successors expressly to be appointed, and in terms through the medium of the Court of Common Council of London, by election, by annual election, removing the half of that body annually; and in case of interference and removal for misbehaviour, by substituting others not to be taken from the world at large, but from persons possessing precisely the same qualifications, being parcel of the Court of Common Council, parcel of the Corporation of London, elected amongst themselves by the voice of the members of the Court of Common Council.

But, my Lords, my learned friends on the other side say, “ It is too late to contend that you are not the trustees of the twelve Companies; your declarations and your acts equally prove you to be so. The Corporation of London, at the time

when the original charter was forfeited, employ (say they) expressions clearly indicative of their being the mere trustees of the twelve Companies—it is the ground on which they prefer their petition to the throne that those lands should be restored, and that they should have the means of reinstating the Irish Society, which was overthrown, together with the removal of the property of the original holders, the twelve Companies.” No doubt, among the records of the City, particular passages may be selected, which, unexplained, without reference to the subject-matter of the petition, bear that stamp and import; but your lordships will look to the circumstances under which these representations are made, by whom they are made, and with what object they are made. Why, the application of the Corporation of London for the restoration of the charter, together with the lands formerly held by the twelve Companies, was an application to a certain extent in the character of trustees; for undoubtedly the lands so to be restored to the Corporation of London, or to the Irish Society, by any new charter, was so to be restored, upon their petition, for the purpose of reconveying to the twelve Companies what had previously been conveyed to them. To that extent, to the extent of the land the twelve Companies formerly held, they no doubt sought a restoration on the part of the Crown for the purposes of reconveyance to the twelve Companies. They were suing in that character of trustees, merely as it respected that particular property; but the property which is now in question, either previously to the second charter or subsequently to the second charter, was never contemplated as being the subject of division or appropriation to the twelve Companies, either between the Crown and the Corporation, or between the Crown and the Irish Society, which was to be created from time to time, and to become incorporated, as they were annually elected, by force of the charter. The very application in the character of trustees is explained afterwards by the terms of the charter, that the Corporation might be put into the condition to do that which they had previously done—convey to the twelve Companies those twelve allotments of land. From these circumstances it equally appears to what

the character of trustee applied, and to what it was inapplicable : it applied to the portions of land which the Companies had formerly held—it was inapplicable to those portions of tenements and hereditaments which were not properly divisible, and which were retained by the Irish Society for defraying the charge of the general operation of the said plantation. No act by the Corporation of London had ever been done, from which it could be collected that these indivisible subjects were held by the Corporation in trust for the twelve Companies—no act had been done by them which contemplated a division of that property amongst the twelve Companies ; but if that had been the case, I freely admit that, in the year 1623, there was an appropriation of a surplus, after satisfying the objects of the plantation, to the several Companies ; but the idea of division, the idea of withdrawing it from the objects of the plantation, never appears to have entered the mind of those who composed the Corporation of London at that day ; and if any doubt had existed upon that subject, that doubt is removed by the express terms of the charter, which authorize in the strictest terms the Irish Society to retain those indivisible subjects for the general operation of the plantation. I will just read it to your lordships, because a distinction is most clearly taken in the charter itself between such property as is to be reconveyed and such property as is to be retained, putting the parties under the second charter precisely in the same position in which they relatively stood prior to that charter, and putting them in the same position in reference to which they had previously acted.

My Lords, this is in page 14 of the charter :—" And whereas the said Society of the Governor and Assistants of London of the new plantation in Ulster, within the realm of Ireland, by virtue of a certain license from our said illustrious grandfather under the great seal of England, bearing date at Westminster the thirtieth day of September in the thirteenth year of his reign over England, France, and Ireland, and over Scotland the nine and fortieth, did grant unto the twelve chief Companies of our City of London, (which had taken upon themselves the greater part of the burden of the said plantation)"—

and undoubtedly the twelve portions of land involved the greater portion of the property which was to be the subject of the plantation,—(“ which had taken upon themselves the greater part of the burden of the said plantation), divers great quantities, parcels, and proportions of the said lands, tenements, and hereditaments, according to their several disbursements, and did retain in their own hands”—the Society’s own hands—“ such part of the tenements and hereditaments as were not properly divisible for defraying of the charge of the general operation of the said plantation.” For what purpose? To act from time to time in the character of trustees to those twelve Companies? No—to retain them “ for defraying of the charge of the general operation of the said plantation.” Now have they nothing to do? Are those words of course? Is there nothing further to be effected? Was the plantation complete in the time of the second charter? Was there no room for improvement? Was nothing yet to be done? Are they not, on the contrary, constituted as a Society, for ever—an incorporation, always to promote the objects of the Protestant plantation in Ireland? And here it occurs to me to make one remark, which more properly belongs to the case of those who have preceded me on behalf of the Irish Society. When we are speaking of funds administered by the Irish Society, and the proportion which the expenses of management bear to the annual receipt of those funds, it should be recollected that the bulk of the property had been already divided among the twelve Companies: the twelve Companies had taken the bulk of the property, and with it the burden of the plantation. In respect to that property there remained a fund to be administered by the Irish Society; the expenses of management would bear a very large proportion to the funds actually received; because the administration of the funds is to apply itself not only to the lands retained, and to those matters which are indivisible in the hands of the Irish Society, but to the general objects of the plantation—to the purposes of education, to the support of charities, to the sustentation more especially of the corporations of Londonderry and Coleraine, salaries to their officers, and support to them in a variety of



ways ; and, in fact, that which the Irish Society has to execute is what can never be completed so long as there is an incorporation of the city of Londonderry, so long as Coleraine exists, and so long as a Protestant plantation is to be sustained. Under the condition of the original grant there never can be wanting objects to which these funds may and ought in the first instance to be applied. The expense, therefore, of management can bear no relation to the particular sum reserved ; the relation which it bears is to the whole objects of the plantation, and to the accomplishment of the objects which the City, as contracting parties with the Crown, undertook to complete.

My Lords, I will just trouble your lordships, (although I am quite aware that it has been read before)—but as throwing some light upon the nature and extent of the duties of the Irish Society, I will just call your lordships' attention to page 25 of the charter. The Irish Society are to hold Courts ; they are to have “ full power and authority of convening and assembling a Court in the Guildhall of the City of London, and in the same Court to do, hear, transact, and determine all and all manner of matters and things whatsoever of, for, or concerning the plantation or government aforesaid, as to them shall seem best and most expedient. And also, in the same Court or meeting, shall and may have full power and authority to direct, appoint, and ordain (for and on the part of the Mayor and Commonalty and Citizens of our City of London in our kingdom of England,) all and singular things which, for or concerning the plantation, supply, establishment, continuation, and government of the said city of Londonderry, and of all other the lands and tenements hereunder in these presents mentioned to be granted, shall seem to be most profitable and expedient.” Their funds are reserved to them for this the general operation of the plantation, not limited to such portions of land or matters as are retained in their immediate possession, but in the terms of defraying the charge of the general operation of the said plantation as is mentioned in page 14 ; and here for all the purposes expressed in the charter, extending as well to the lands in the hands of the

twelve Companies, as to lands or other matters indivisible and retained by the Irish Society.

Now, my Lords, I will just pause here to observe, that too much stress—and I shall presently show to your lordships that the whole claim of these twelve Companies entirely results from it—has been laid upon the simple, dry fact of the surplus being paid over at the pleasure of the Irish Society, after satisfying to its most enlarged extent (as they deemed it) the then immediate objects of the plantation; that their whole case is nothing more than the act of the Irish Society, the gratuitous act originally of the Irish Society, appropriating to the use of the twelve Companies the surplus funds. They clearly took nothing by the charter; for in taking what they do take, there is not only an implied exclusion of the rest, but there is a precise exclusion of what, in the terms of the charter, is conveyed independently and exclusively to the Irish Society, not for the use of the twelve Companies, but for the general operation of the plantation. Then it further goes on to say—"To send orders and directions from this kingdom of England into the said realm of Ireland by letters or otherwise, for the ordering, directing, and disposing of all and all manner of matters and things whatsoever of or concerning the same plantation, or the disposition or government thereof." And what further?—"And also for the receipt, ordering, disposing, and laying out of all sums of money now collected and received, or hereafter to be collected and received, and generally any other cause, matter, or thing whatsoever concerning the direction or ordering of the said plantation, or concerning any other things whatsoever, which by the true intent of these our letters patent can or ought to be done by them for the better government and rule of the said city of Londonderry, and county of Londonderry." This is the whole subject-matter of the grant, in respect of which the plantation was to be effected; and their right of administering the income to be derived by the Irish Society is co-extensive with the whole objects of the plantation, and with the whole county of Londonderry, which was the subject of the grant.

Now, my Lords, your lordships therefore have this fact, that

not only was this not granted to the twelve Companies—not only were not the Irish Society rendered trustees for the payment over of this money, or even of any surplus—but the income of these indivisible matters was expressly reserved to the Irish Society, for the general administration of the public trusts claimed to be performed by the City of London for the Crown. I think I can show your lordships a tolerably good reason from which the appropriation of the surplus to the twelve Companies originated. Your lordships perceive that the twelve Companies having raised, through the members of the Companies, but not out of their corporate funds, by taxation of the poll, several sums of money, have the advantage, in their arrangements with the Corporation, of being repaid, not by payment to the original parties advancing the money, the individual citizens, but by payment to the Company of that which was most abundantly an over-payment for any sums advanced by individuals. The twelve Companies represented all the other Companies; they were trustees for themselves and others, in respect of the lands which were conveyed to the twelve Companies, in the proportions in which the members of each Company (though, loosely speaking, it is stated to be the Companies themselves,) had contributed to that fund. Now, inasmuch as the twelve Companies have, in the terms of this charter, undertaken the burden of the plantation, they had done so originally by compelling the members of the Companies to contribute funds, and the corporate funds had the sole benefit afterwards; they must have acted through their tenants in carrying out the objects of the plantation: it was to be planted by Protestants, to be occupied by tenants. Was any thing more natural than that the Irish Society (looking at the general objects of the plantation, after satisfying the immediate objects of the plantation in reference to the indivisible property in their hands, in reference to the Corporation of Londonderry, and in reference to the Corporation of Coleraine, and all the regular establishments of schools or otherwise, which they had made,) should say this—"We have, after doing this, our more immediate duty—fund still in hand. The Companies not only have undertaken the plantation upon the

proportions of land which they occupy, and which have been conveyed to them, but they, in furtherance of the objects of the plantation, are put to expense in that respect. Instead of our judging in each individual instance as to the propriety of doing something upon those lands already conveyed to the Companies in furtherance of the general objects of the plantation, we will pay over to the several Companies their proportion of the surplus, leaving it to them to pay over the respective portions on the respective estates, which they enjoy?" That may be fairly inferred to be the motive operating on the Irish Society to pay over the surplus. But what was it? It was not required by the charter; it formed no part of the contract with any of the Companies, or the Corporation of London; neither before nor after the charter had they undertaken to divide or distribute this money: it was therefore, in strictness, a mere gratuitous act upon the part of the Irish Society. But inasmuch as the twelve Companies were in the course of forwarding the objects, and had undertaken greatly the burden of the plantation, it put them in funds respectively to carry out these objects: therefore it might be said to fall under the authority which the Society had over the funds, and to be not a misapplication, if given to Companies for such purposes. It was, however, gratuitous, and resulting entirely from the large discretion involved in them, but where, as matter of purchase, the Companies could have no claim upon the Irish Society; otherwise there would have been some record that the Corporation of London, when they had divided the allotment of land to the twelve Companies,—that the Irish Society, or the Committee, as it originally was, should hold the remainder to the use of the twelve Companies, after satisfying the objects of the plantation. Nothing of the sort appears; and if any thing appeared of that kind originally, I should submit to your lordships, that the express language of the charter concluded the Corporation of London itself upon that subject. The primary object to which they were bound to look was the establishment of the plantation—that was their contract with the Crown; and they had no right to apply to the use of the twelve Companies those sums which should have

been employed in the general objects they had undertaken—the sustentation of the plantation in Londonderry and Coleraine, with the establishment of Protestantism, by every favour they could show in that province; in which, as your lordships know, the Crown was requiring from time to time, previous to the annulling of the original charter, that the common Irish and the Catholics should not be encouraged to reside—that it should be a Protestant plantation, and that those objects should be carried out.

I therefore submit to your lordships, that it does most abundantly appear, first, that the Corporation of London had an original control over the Committee appointed by themselves from their own members, which they retain in the terms of this charter, with a power of nomination and of removal, and expressly under the stipulation, that what the Irish Society did should be done on behalf of the Corporation of London, in their corporate name of Mayor, Commonalty, and Citizens; that they are to be strictly considered as the parties to whom the Crown confided the visitatorial power in the event even of the delinquency of the members of the Society, by their removal of such members, and by the substitution of others in their place; next, that the Irish Society have a large and unfettered discretion in the ordinary management of the affairs concerning the plantation, responsible only, in the case of misconduct, to the Corporation of London, in their capacity as visitors of the Irish Society. I do not, at the same time, contend that the plaintiffs, in common with the other Companies, may not have acquired a qualified feeble interest in the surplus of these estates, not applied or immediately wanted for the purposes of the plantation; but I am anxious, in conjunction with those who have much better effected this object, to promote it to the extent of my power—to lay before your lordships how qualified and how limited is the claim and the right of the plaintiffs in this suit; that it is not a claim that would entitle them, upon the hearing of the cause, to the grant of any portion of the prayer of this bill, still less to the granting of the motion which owes its existence only to the capacity of the Court to grant the prayer at the hearing of the cause, which is auxiliary only

to the object of granting that prayer when the cause shall be finished.

I think I ought not, although it has been fully adverted to, entirely to quit this head of argument, without saying, that perhaps the Corporation of London, as originally constituted, would be most particularly disposed to favour the twelve Companies. It is known that the Aldermen are members of the greater Companies, and a large proportion of them are constituted members of the Irish Society—I mean relative to the number of twenty-six, as compared to the total number of Common Council. Originally the Common Council were four from each ward, that would make them four times as many as the Court of Aldermen. They have been increased, and they amount now to 240 individuals, with the Mayor and Aldermen; as popular a body as well can be called upon to exercise the functions delegated to them, in watching the proceedings of the Irish Society, in furtherance of the objects of this plantation. But in addition to that, your lordships are aware, that until very lately, within the current year, both by the acts of the Common Council, and by the custom of London also, parties were not admitted to the freedom of London unless they were members of one of the Companies. That rule has been broken in upon only during the current year. There were occasional instances of grants by the Corporation of the honorary freedom, and which might carry with it the advantages of freedom; but acting in the more ordinary way, the conferring of the freedom was an act of the discretion of the Court of Common Council, and the rule of conferring the freedom under the act of Common Council was that they should be members of one of the Companies: so that the Corporation of London, composed of this variety of persons, Aldermen and persons returned from the several wards, had the qualification of being freemen of London, and the qualification, in order to that freedom, of being members of the several Companies. The Irish Society, as your lordships have heard, was not only composed of persons who were necessarily members of some of the Companies, but until a recent period they were limited to twelve Companies; and though I am not compelled to strain the argument beyond

disposing and laying out of all sums of money now collected, or hereafter to be collected and received." Will your lordships infer that this usage, which might be reconciled with the objects of the charter, was in contravention of it; and is to be admitted to defeat the charter? or will you not infer, where two reasons may be assigned for the appropriation of this surplus, a legitimate reason, consistent with the charter, and a reason inconsistent with it, that the legitimate reason consistent with the charter would be the reason for which it was distributed to the Companies, in furtherance of the objects of the plantation? And it would be consistent that they should be judges of that surplus, because they are desired to exercise their discretion, and to have the entire receipt of all sums of money then collected, or thereafter to be collected.

My Lords, I should therefore submit to your lordships, that it abundantly appears that this is nothing more than a habit, on the part of the Irish Society, of paying over to the respective twelve Companies, of which they were members, any surplus in their hands, after satisfying, according to their unrestrained discretion, what they deemed to be the proper objects of the plantation, or of the management of its concerns. Can it be said that, in the terms of this charter, if they had persevered from the beginning in applying every shilling of which they had the ordering, collecting and laying out, to the objects of the plantation, that these Companies would have said, "You shall treat this as private property, and you shall not apply it to the public purpose?" Can it be said, that this is private property in the sense which would form the foundation for the present application; that it is essentially private property, not hampered by any public trust or expenditure, to be applied by the Irish Society? If it is not private property, it must be property, in the first instance, to be applied to public purposes,—and the Companies have an interest only in the surplus, after supplying those purposes, of which the Society are the judges. With whom does the discretion reside as to what is the surplus? After promoting the proper objects of the plantation, will your lordships repeal the terms of that charter that have vested that object in the Irish Society? Will you

infer an interest opposed to the charter, upon the fact of this gift of the surplus by the Irish Society, which, with the explanation I have given, may be reconciled with the terms of that charter? This, my Lords, does appear to me to be the most extraordinary application. It really is very much like the case of a party, who by use and appropriation of the surplus of a stream of water to his own purposes, after that stream had been applied to the turning of a mill, should say—"Because you have always allowed us the use, and we have acquired a right, by use and by appropriation of the surplus water, that is evidence that the water should never have turned your mill,—it is evidence that it is all our own; and because we have had the surplus, therefore we are entitled to the whole; and the mill shall stand still, because we have appropriated the surplus-water which was not wanted for the mill to our own use." It does appear to me to be the most extravagant argument, to reason from the fact of a party being allowed a surplus, to his right in the administration of the whole—that the whole belonged to the party, and was in trust only of the individual who administered it, in the face, too, of the distinction in the terms of the charter, through which the twelve Companies, as well as all the parties concerned, derive their title. It is through the charter alone that the twelve Companies acquired the restoration of the forfeited lands; it is through the license given to them, to take and receive what the Irish Society shall choose to give, that they acquire any property at all,—and because the Irish Society, in addition to being willing to give and to recover the lands previously occupied by the twelve Companies, have been pleased to appropriate to them, from time to time, what they have thought to be surplus—it is to be taken, that that license should apply not only to property which has been conveyed to them as before, which the Society were willing to give, but to property expressly declared to be indivisible—to be retained for the express objects of the plantation, for the general operation of the plantation.

My Lords, amongst the other claims, my learned friend, Sir Charles Wetherell, has noticed that of the claim to the partition of those estates. The prayer is in the alternative, and prudently so; because I think my learned friend must have



satisfied your lordships, that the bill of partition was in the nature of a writ of partition; and that it would not lie for land in the kingdom of Ireland. I apprehend, supposing this was looked upon as charitable property, that could not be administered by this Court, but by the Great Seal in Ireland; the Act of Parliament conferring additional powers upon this Court in reference to charities, and in reference to education being expressly confined to England and Wales; the subject-matter being locally situate within Ireland. I am willing to admit that that observation would not apply to monies in hand, which they might hold; and in extreme cases, undoubtedly, there might be in this Court—although they could not compel a partition—a mode of dealing with persons found to be mere trustees, which would place them in an alternative which might effect that object. But, my Lords, the land itself is locally situate in Ireland—those indivisible estates lie there; and I apprehend, certainly, are not the subject of partition, as prayed by this bill. I mention that quite apart from the consideration that if your lordships could be prayed to do that act, you would be prayed, not to alter the charter, but to repeal it. The case to which my learned friend referred is in Comyn's Digest, 1st volume; I am not in the condition to refer to the name under the title E, and another case in 1st Vernon, 421. And, in the last case, they cited for precedent, Sir William Petit's case,—“where the bill being to have a partition of lands in Ireland, it was dismissed—but as to matter of account, it was retained.” Those are the cases that my learned friend has referred to; and therefore I will not venture to offer any further observation, than as adopting the line of argument taken by my learned friend.

Now I submit to your lordships that the only claim upon the facts brought to the attention of the Court, is, that it appears that where there has been any surplus which the Society did not want for the purposes of government and of management, including the improvements which they are proved to have from time to time forwarded in furtherance of the objects of the plantation, that they allow the surplus (resulting after satisfying to their most enlarged extent,

according to their discretion, the objects of their public trust)—they allow the surplus to be divided,—I should apprehend originally in furtherance of the same object,—not to be squandered away by the Companies in reference to their convivialities, but to be applied to relieve the burden upon their respective lands which they had obtained.

Now, my Lords, it appears that the Irish Society were undoubtedly connected with the twelve Companies in objects common to this plantation; and on the 9th of November 1615, it appears that “precepts were issued by the Society to the twelve Companies for certificates of their works and operations regarding the plantation of their several proportions, in order that the Society might be able to give an account thereof to the Government, when they should be ordered, which they hourly expected; and the Companies made their returns pursuant to the Society’s requisition.” This is in the 44th page of the “Concise View.” This appears to me to throw a light upon what I have ventured to suggest—that the Society and the twelve Companies were in communication upon the common objects of the plantation—that they require them to show what they have done, that they may show the Government that they have executed their contract; and if you find this restraint of the twelve Companies with reference to those portions of land, and you find a few years afterwards, in 1623, an appropriation of a surplus, it must be inferred to have referred to the common objects that were the subject of communication previously by the Irish Society and the Companies. “You will be required,” the Irish Society say, “to show what you have done in furtherance of this plantation. We shall be required to satisfy the Government in these respects, having undertaken the principal burden upon this allotment; we make an appropriation of what we deem to be surplus in our hands in furtherance of those objects.” The first dividend, I believe, will be found to be in 1623.

Sir WILLIAM FOLLETT.—1614.

Mr. RECORDER.—I will take for the purpose of argument that it was in 1614—that does not weaken the observation I made, but it serves to bring into juxtaposition the Society

and the twelve Companies ; for if the date were 1614, it was a good reason why, on the 9th of November 1615, they should call upon them to show what they had done in respect to their allotments, for which they were responsible. Then the Irish Society took upon themselves without dispute, which was submitted to without complaint, to allot 500 acres of land at the time, by means of making a payment to the Recorder of the city of Londonderry, and 300 acres were also applied to the establishment of a free school. Now that was distinctly an application of this property utterly inconsistent with their being trustees of the twelve Companies, who could derive no sort of benefit from this mode of payment of the salary of the Recorder of Londonderry, any more than that which went to the establishment of a free school.

Now, my Lords, I took the liberty of stating that, before I sat down, I would shortly advert to the question of visitors again. I contend before your lordships, that the peculiar visitatorial power which the City of London possess, is that of superintendence over the Irish Society in the terms of the charter, and according to the original constitution of the Irish Society, when it was but a committee composed of the individual members of the Court of Common Council.

Sir WILLIAM FOLLETT.—I observe my learned friend stated that the Society had assigned 500 acres of land to the Recorder. The Society did not do that, but certain commissioners who were sent to Ireland ; they assigned 500 acres of land, which had formerly belonged to Rory O'Kane, who had incurred a forfeiture of his land by a criminal conviction.

Mr. RECORDER.—My learned friend will have an opportunity of substantiating that in his reply : it is, we contend, a part of the land comprehended in the grant by the charter, and not appropriated to the twelve Companies. I am at issue with my learned friend upon that matter ; my learned friend has made very large allusion to that book that I am holding whenever it has suited his purpose, and it has been under the review of the Court ; it is by way of illustration of the acts done by the Irish Society that we produce it.

Sir Wm. FOLLETT.—This is no act of the Society.

Mr. RECORDER.—If it is not, it is a much stronger act—an act of the Commissioners appointed by the Court of Common Council ; it is infinitely stronger as to the claim that I have to prove. At page 45, your lordships will find, (as my learned friend has interrupted me at this point I will return to it), “ The Society represented to the Common Council the necessity of sending two persons into Ulster, to view and examine the state of the plantation, and to make a Report thereof on their return. Accordingly the Court”—this is pretty strong evidence of the power retained by the Corporation of London—“ elected two persons for that service, who were not on the Society ; but they afterwards declining it, the Court enacted that the Governor of the Society, Mr. Alderman Proby, and Mr. Matthias Springham, one of the Assistants, should proceed to Ireland, at the expense of the general fund of the plantation, with full powers from the Court, to view, examine, and regulate whatever was necessary, in regard to the affairs of the plantation ; and an authority in writing, under the common seal of the City, was made out, and instructions were delivered to them.” I have mentioned two of their acts. It was a most authoritative act on the part of the Corporation of London. The Commissioners granted five hundred acres of land to the Recorder of Londonderry, and three hundred acres to a free school. My learned friend may make what use he pleases of that extract, when it shall be his turn to address the Court ; in the mean time I insist that this portion of land was a portion of that granted by the Crown, and included in the charter. The Commissioners could have no possible power, appointed as they were by the Common Council, to take possession of lands—feoffed lands they could only have the power to take by the grant of the Crown ; and it does establish, as a very authoritative act, the interference of the Corporation of London, not only with the concerns of the plantation, but with the Society itself. And a stronger act of submission on the part of a Society to visitors, could not be evinced, than the application, in such an emergency, to the Court of Common Council, to take into their hands effectual means to carry this object into execution.

My Lords, I pass from that subject. I apprehend, therefore, that it abundantly appears that there exists this visitatorial power on the part of the Corporation of London. It will be quite unnecessary for me to cite any authorities to inform your lordships—I will not presume to use the expression—but to recal to your lordships' recollection, that no technical form is necessary for granting a visitatorial power; and that it has the sanction of Lord Hardwicke on several occasions, that the power, the removing power, includes every thing. It has also been laid down, that "no court of law or equity can anticipate the judgment of visitors, or take away their jurisdiction, for their determinations are final and conclusive." Now, in illustration of that, I would only say, that the same principle applies to a court of law as applies to a court of equity; and assuming that the power of the Court was called into operation in the shape of a mandamus, requiring this Irish Society to do a certain act, if it appeared, in return to that, that there was in point of fact a visitor, to whose direction such a question would be submitted, with the power of removal, the Court would, as in the case of the King against All Souls (reported in Sir Thomas Jones's Reports), the Court would say, that they could not interfere, because by the return it appears that the visitors are made sole judges without appeal. I am aware of the distinction that is made between the case of visitors having no management of the revenues, and the case where the revenues are under the management of the governors and directors. I would admit that, supposing apart from this charter that the Court should see that it had jurisdiction in the matter, that if the same body were governors and directors, as were the parties to receive and apply the revenues, that might be a case for interference; but not, I apprehend, then, if there were yet a visitor or governor over them, to whom the management and application of the revenues did not belong; and I would just refer your lordships to the doctrine as it is laid down in the Attorney-General *v.* Middleton, in 2d Vesey, senior. In the Attorney-General *v.* Middleton in the 2d Vesey, junior, Lord Commissioner Eyre says: "There is nothing better established than that this Court does not

entertain a general jurisdiction to regulate and control charities established by charter. There the establishment is fixed and determined, and the Court has no power to vary it. If the governors established for the regulation of it are not those who have the management of the revenue, this Court has no jurisdiction." Now the governor or visitor, of whom I am speaking—the City of London—is not the governor who has the management of the revenues. The Irish Society are such; and if it is ever so much abused, as far as concerns the jurisdiction of the Court, it is without remedy; but if those established as governors have also the management of the revenues, this Court does assume a jurisdiction of necessity, so far as they are to be considered as the trustees of revenues.

**LORD CHANCELLOR.**—It is very well known; it is not necessary to refer to the authority.

**Mr. RECORDER.**—I have referred your lordships to the doctrine of Lord Hardwicke upon that subject, and that laid down by Lord Commissioner Eyre; and I apprehend that there is nothing more clearly established (supposing this case may be likened to the case of these public trusts, which are comprehended in the head of charitable trusts), that if by the Crown a special visitor is appointed, and that that visitor is not at the same time the party who has the management of the funds, this Court will not interpose, especially where no appeal has been made to that visitor so specially appointed in respect of the matter complained of. In the case to which I alluded by mandamus, it was distinctly resolved by the Court, that the appointment of visitors made them sole judges without appeal. That was an application with respect to the fellow of a college, and not with respect to funds; but there having been no appeal made to the visitor in that respect, the Court dismissed the application.

Now, my Lords, I apprehend that where any charter exists,—a charter from the Crown,—the trusts, public or otherwise, must be regulated by the terms of that charter; and that this Court, no more than a court of law, would sit to defeat the objects of the charter, or to assist private parties in the administration of funds, which were dedicated to public purposes. In the

present instance, those funds are placed under the administration of the Irish Society, to carry out the objects of the plantation—the general operation of the Society ; they have, in the terms of the charter, the sole ordering, management, and disposal of them ; they have a perfect discretion, at their Courts, to say how they shall be applied ; and if they misbehave themselves in their office, the Court of Common Council can remove them. That the Corporation has interfered in a variety of instances, not in respect of removing them, because there has been no complaint in that respect, abundantly appears. They stipulated, that, whatever the Irish Society should do, they should do on behalf of the Corporation of London ; they retained to themselves the power they previously had of removing for misconduct the members of the Irish Society. The Irish Society stood precisely to the Corporation in the relation of the Committee of the Court of Common Council, and were incorporated only the better to carry out the objects of the plantation, the control being retained by the Corporation of London as visitors, and the Society, which they elected, and could remove and reappoint from time to time, was incorporated for the special objects of the plantation.

My Lords, I might, by referring to the circumstances to which I have alluded, occupy your lordships' attention for some short time longer ;—and I certainly have some apology to make, that in the disarrangement of my papers, though I have the authority, it is involved with some notes which I have made ; at the same time that it would perhaps occupy more time than would be becoming, to reduce into a more correct form the various extracts that I have ;—but I apprehend that where there is a special visitor, by analogy to the case of public trusts, that amount to charitable trusts,—where there is a visitor in the foundation of the establishment specially appointed to remedy any evils that may arise, that, if that party be not also the administrator of the funds of the Society, to him, and him alone, even to the exclusion of this Court, would belong the jurisdiction to remedy whatever was amiss ; and if that were questionable, that this Court would never

interfere where such a party existed, to whom application might be made, to whom no such application had been made in the first instance. But, my Lords, it is not necessary for me to rely even upon that doctrine, if I have been so fortunate as to follow my learned friend as to the exact and limited extent of the claim which belongs to those twelve Companies. I submit that to be nothing more than a gratuitous exercise of the discretion of the Irish Society, in the appropriation of the surplus in their hands, undoubtedly creating, from that period of long usage, a feeble interest and qualified right in those twelve Companies, to which right and to which interest this Court might, in a case of extreme delinquency, be supposed to direct its attention, and to suggest the remedy; but that in this particular case it is a feeble and qualified interest merely to receive what the Irish Society may be willing to grant, and which, in their discretion, after satisfying the objects of the plantation, they may deem it expedient and proper to grant—that there is nothing to limit the right of the Irish Society to apply the whole that they receive to the public purposes of the plantation—and that therefore there can be no right in those twelve Companies, as opposed to the discretion by which the payment of the surplus has been always regulated and directed.

Under these circumstances, I submit to your lordships, that, as it may be humbly conceived to be the duty of courts of law and equity to confirm the charters of the Crown, and not defeat them, there is no ground for the present application.

Mr. KINDERSLEY.—My Lords, I am sorry to say that I appear as the sixth counsel for the defendants.—I appear with Sir Charles Wetherell and the Recorder for the City of London. Your lordships have heard the case very much gone into by the counsel for the Irish Society, and also for the City of London, by my two learned leaders; and though I am afraid I shall consider it my duty to offer some few observations, I shall do all I can to abstain from going over the details, which have been gone over. But, my Lords, I shall make a few observations, condensing as much as I can, and only referring to points that have been called to your lordships' attention.



The case made by the plaintiffs is a case of this sort. They say that they advanced their money, and by advancing their money became purchasers, as it were, from the Crown of the lands and property in question,—that having become purchasers they are entitled to have that property in some way or other divided between the plaintiffs and the other Companies, or applied to their benefit,—that the Irish Society are merely trustees for them—that they are *cestuisque* trust,—that there has been a misapplication of funds by the trustees, which entitles the *cestuisque* trust to prevent those trustees continuing in the receipt of the trust funds,—nay more, that that misapplication has been so great, and so alarming, that the trustees are not only trustees who ought to be removed, and other trustees appointed in their place, but that those trustees are not fit to be entrusted with the power of receiving a single farthing till the hearing of the cause.—That is their case; that if they are allowed to go on receiving the property till the hearing of the cause, there is great danger that there will be great waste and misapplication of the funds—that some of the *cestuisque* trust are therefore deeply impressed with the sense of that danger. Your lordships will allow me to call your attention to the dates. The plaintiffs, in the month of July, 1832, file this bill, praying this Court to appoint a Receiver of all this property, and praying the Court for an injunction to restrain these (so called) trustees from continuing any longer to receive the rents. Under this deep sense of danger, that bill being filed in the month of July 1832, the matter stands till May 1834; at which time the plaintiffs amend their bill, and amend it again in the month of July 1834, two years after the bill had been filed; and then in the month of April 1835, being at a period of very nearly three years after the filing of the bill,—during all which time, no doubt, they were in great apprehension that their money would be wasted,—they were in an agony of doubt and fear lest their money should be lost by reason of the misconduct of trustees: they then give notice of a motion; and here we are, in the month of February 1836, still discussing it.

Now, my Lords, the plaintiffs' case would not stand for a

moment, except by representing it as the case of a trustee and *cestuique* trust, and that there had been a misapplication of the fund; but, even taking it upon that, it appears to me that the plaintiffs have overlooked the principles of granting a Receiver. It is not a matter of pure course; it requires a ground to be made for it. It requires that the party who applies for a Receiver should show, either that it is perfectly clear that at the hearing the relief that he asks is the relief which will be granted to him, and therefore that the Court may interfere by interlocutory application; or that there is that degree of imminent pressure and danger that will induce the Court to interfere, in order to prevent the property being wasted; and moreover, they seem to forget, that the Court grants an injunction only to parties who are active in asserting their rights, and in asking the Court to protect them; but here a party, who is a *cestuique* trust (I am at present assuming that), goes on for years, nay for centuries, acquiescing in,—nay, in one sense being a party to the application of the trust property,—and now he comes and says, “ You are trustees, who have been going on misapplying funds—you ought not any longer to apply them;—so, though I have acquiesced in that application for a century or more, I ask for the Court not to say that that shall not be continued, but to apply this extraordinary and summary remedy—to do what? to protect my property from imminent danger.”

My Lords, that is the case even upon the plaintiffs’ own ground, of their being *cestuisque* trust. Suppose it were so—suppose that instead of the Skinners’ Company and the Irish Society, it were John Stiles and Joseph Noakes, what would the Court say? You, John Stiles, have been going on and allowing Joseph Noakes to deal for twenty years with the funds in a particular way—you have been a party to that application; and what right have you to come here to say, (whatever your decree may be upon the hearing,) upon the motion—I insist upon it, that the Court shall interfere to stop this, nay to prevent that trustee from ever receiving a single farthing more? But when your lordships find, upon the opening of the plaintiffs’ case, that besides this alleged existence of a trust and

*cestuique* trust, this was a case in which, even if the Irish Society be trustees, that they were trustees not merely for the Skinners' Company and the other City Companies, but trustees for anterior purposes—when your lordships find that there are duties and obligations to be performed by the Irish Society, anterior to any right existing on the part of the City Companies, why, I apprehend your lordships will say that that entirely displaces the whole case upon which the plaintiffs could stand; and that there is no reasonable ground whatever for granting the application.

Now, my Lords, much discussion has taken place upon the question whether or not the City of London, as a Corporation, or the City Companies, were the original contractors? My Lords, I apprehend that, upon what your lordships have heard, there can be very little doubt that the real state of the case was this:—undoubtedly James the First's object was to carry into effect certain large political and public purposes, for the benefit of the North of Ireland, and the improvement of it. That was his main and prominent object. He considered that the mode of doing that (whether he was wise in his view or not is not the question now), was to establish a Protestant colony of English and Scotch and Irish Protestants. He applies to the City of London, in the first instance, to assist him in carrying that into effect; he holds out to them the example of the city of Bristol, which had before colonized, as it were, the city of Dublin, and made that a Protestant city; and he urges them to undertake the matter. I do not mean to dispute that the City of London, upon consenting, did consider that the money which was to be advanced for the purpose was not money that was to come wholly out of the funds peculiarly of the City of London; as a Corporation, they considered that other persons would advance monies, and that other persons would benefit, as other persons have done, by having lands granted to them by the King, in compensation for the monies advanced; but still, whatever was to be done by way of advance of money, was all subject to the paramount purpose which the King had in view, which was a public and political purpose, and for the benefit of the North of Ireland generally.

My Lords, that being so, we find that the City of London, and not the City Companies, are the parties to the articles of agreement between the Privy Council and the persons appointed by the City. The Privy Council are the parties for his Majesty, on the one part, and the Committee on behalf of the City of London (in words) on the other part; and the understanding was, that the lands, which were to the amount of many thousands of acres, should be distributed, as far as was consistent with the main and primary purpose of the King, among persons who should advance monies for the purpose. I do not dispute that at all, but that the main and primary purpose of the King should be first carried into effect; and your lordships will observe, that throughout all the documents to which the King is a party, whether they be his Letter to Sir Arthur Chichester, the Agreement, or the Charter—in every one of those, the purpose that he had in view, as a public purpose, is put forward, as indeed the sole object that he had in view. My Lords, that being so, the City of London undertake the work as they expressly state in their Answer; denying the allegation in the bill, that they refused to undertake it, and that the Companies undertook it; they state in their Answer, that the City of London did undertake the matter, and did enter into a treaty and contract with the King. We find, then, that the City of London assesses the different Companies, according to the corn rate, by which previous assessments had been made; and we find in the Answer of the City of London this statement,—“That although the said Companies were taxed, and made such advances of money for the commencement and prosecution of the necessary works of the colony, and for completing the same as aforesaid; yet these defendants say, that such taxation and advancement of money took place, and was enforced by the general right or authority which the Corporation of London anciently exercised over the said Companies; and these defendants say that the Records of the said Corporation contain a great number of precepts and acts of Common Council, imposing taxes on assessments upon the several Companies for a great variety of purposes independent of and unconnected with the said

undertaking, colony, or plantation, and through a long series of years, and until long after the commencement and formation of the said plantation in Ulster; and that such purposes were not always such as would be classed under the head of public or general purposes for the public safety or good, but many of which relate to matters distinct therefrom, as matters of pageantry or state; and the defendants say, that the said several Companies do not allege, and they have no pretence for saying that they have any right against the said Corporation of London, or lien on or right against their corporate estates or effects, in respect of the said last-mentioned impositions or assessments."

Now here, my Lords, is a positive statement that the City of London exercised the power, and had the power, by compulsory process, of assessing the different Companies for any purposes for which it was considered that they ought to be assessed, and even for purposes of mere pageantry and state; and the Companies never thought of calling upon them to restore any part of that money. Therefore I might say, though it is not necessary for the purpose of my argument, that when the Corporation of London compelled them to advance monies, they were not in any way under obligation to give them a single acre of land for those advances; but I am perfectly ready to admit that the understanding was, that whatever could be, consistently with the main object of the King, given to the Companies, should be given to them.

Then, my Lords, the City of London found it convenient to have a machine, by which they could carry into effect the purposes; and they appoint a Committee of their own body—no committee appointed by the Companies, but by the City of London. That Committee, which is to consist of a governor and deputy-governor and twenty-four assistants, those assistants to belong to particular bodies, is exactly the Irish Society subsequently incorporated. The incorporation of the Irish Society states, that it shall consist of the governor and deputy-governor and twenty-four assistants, and those belonging to the same class of persons of whom the Committee consisted. That Irish Society was incorporated by the King—for what purpose?

for the purpose of being a mere trustee for the benefit of those Companies who advanced the monies? Does the King's incorporation of the Irish Society so much as mention the Companies? The King's incorporation of that Society mentions the main and paramount objects that he had in view, and authorizes that Corporation to carry into effect those views in the manner in which they should think it most expedient to do it. Obviously one mode of doing it would be, to give to the persons who might advance money, tracts of land which they might cultivate and improve; but is there any constitution here of trustee and *cestuique* trust? Let it be considered if the Skinners' Company are *cestuique* trust, they are *cestuique* trust either by virtue of a contract between them and the King, or by virtue of the King's bounty to them. They put it upon the footing of contract; they put it upon this footing, that they advanced their money, and that, therefore, having advanced their money, they have become purchasers from the King. Now let us see how that was: they had advanced their money, the greater part of it, before the King had given to the Irish Society one single acre of land—the Irish Society was not even in existence, and had not any land conveyed to it till 1613; the advances began from 1610, and were, the greater part, made antecedently to the incorporation of the Irish Society. Now then, if the Companies were, as they say in fact, the City; if the City of London, who were the parties named in the charter to the Irish Society, and for whose benefit it is expressed in the charter the Irish Society was constituted—if, as the plaintiffs say, the City there means the Companies, that charter was the instrument of contract under which the plaintiffs alone can claim: do they there stipulate that the Irish Society shall be trustees for them of any particular lands, or of all the lands to be divided between them? My Lords, I say if the plaintiffs are *cestuique* trust,—I mean *cestuique* trust having a right to come into a Court of Equity, to say that they will enforce that right,—it is only by virtue of this charter, which grants to the Irish Society the lands in question. Now what does that charter do? First of all, it does not name them—it names the City of London; but for

this purpose—that the Irish Society were an engine, or sort of piece of machinery, established by this charter for the purpose of enabling the City of London, as the superintending and controlling power, to carry into effect the objects that his Majesty had in view. The City of London is armed with this engine of the Irish Society to effect the purposes, and there is no contract either between the Companies and the King, or between the Companies and the City of London, by which they stipulate that, in consideration of their advances of money, they shall have a single acre of land given them, or any more than the Irish Society or the City of London choose to give them. But when your lordships come to this, looking at the license which the King grants to the Irish Society to give lands to the Companies, and to the Companies to hold lands, without which license the Companies can take nothing in mortmain in those lands, what do we find there?—a stipulation by the Companies, for whose benefit that was given, that all the lands are to be given? If it is as the plaintiffs say, then at that time the Companies had a right to say,—for if they have it now they had it then,—that all the lands should be divided between them; that the Irish Society should be merely trustees for the purpose of conveying those lands to them. And it is quite unintelligible to me why a body of a perpetual kind should be necessary for the purpose; but if their right is so now, they had a right then to have all the lands conveyed to them. This, my Lords, is a license obtained by themselves for their benefit. And what is that? Do they there ask the King to grant a license compulsory upon the Irish Society to grant all the lands to them? On the contrary, they recognise by their license that which the King would have compelled them to recognise—at least he would not have given them any license except upon such recognition—the right of the Irish Society to carry into effect the purposes which the Crown had in view, as the paramount purposes of the whole arrangement, and that only so much of the land as the Irish Society thought fit to give them they were entitled to hold.

Now, your lordships will see, that this gives rise to a ques-

tion, which will be a very important question to be discussed at the hearing of the cause, and which I think you will not take upon you to decide upon this motion: that where a Corporation has only power to hold so much as the license of incorporation mentions and gives it power to hold, and if that license of incorporation expressly delegates to a society or an individual the power of saying what that Corporation shall be entitled to hold in mortmain, then the Court would in point of fact interfere with the Crown's right. Supposing the Crown had not given the license of alienation, the Crown might say, "I will license the Skinners' Company to hold such and such lands, and I will constitute the Irish Society to have the management of those lands; and I will license you, the Companies, to hold so much as the Society gives you." Your lordships are now called upon to compel the Society to give them lands that the Society cannot give them; what is that but taking the Crown's right,—and is that what your lordships will do, unless by reason of absolute danger for the sake of the protection of the property? That is not a question which your lordships will decide, but at the hearing of this cause. You cannot decide that question at this stage of the record; there being in respect of that question upon the license to hold in mortmain, the point as to the Crown's right to say how much they shall hold in mortmain, or of the Crown's representative, the Irish Society; there being that question, in which the Crown is most materially interested—no Attorney-General here, and nobody representing the primary *cestuique* trust. Your lordships are called upon to take from that delegate of the Crown the funds, by which alone they can carry into effect those primary trusts—to take from that delegate of the Crown the power which the Crown has thus given to it, and that in the absence of the officer of the Crown, for the purpose of insisting upon what the Crown's rights are: will your lordships do that upon motion, in the absence of the Crown, or of the Attorney-General as representing the Crown?

Not only, my Lords, is that so, but we raise, as it cannot be disputed, indirectly the question as to the Crown's right, in saying that all the public purposes are carried into effect. Here



it appears from this book, that down to the present time there are constant contingencies arising, which call for the application of large sums of money, generally on the average of several thousands a year, uncertain in amount, it being impossible to say whether there may not be a call upon the Irish Society to advance monies for some of the public trusts; and yet your lordships are asked to take from their hands the whole of the money, and put it in trust. And here I ask, Has the Crown no interest in the subject?

Now, my Lords, I say this on the part of the City, though it might be said on the part of the Irish Society: for this reason on the part of the City—the City has contracted with the Crown. I say, though the Irish Society is, technically speaking, the delegate of the Crown, the engine of the Crown, to work out the purposes, the City has, in point of fact, the superintending and controlling power, because the Irish Society is but an emanation and creation of the City of London. The City of London appoints the members of the Irish Society—all of them are appointed from out of the City—they remove them at their pleasure if they do not think their conduct right. It is a Committee of the City of London, armed with the powers of the Corporation; therefore I say, on the part of the City of London, “I have contracted with the Crown by means of this engine, the Irish Society, to work out certain purposes which the Crown enjoined upon me; I have over and over again been called to account to the Crown—nay, fined in the Star Chamber for not having executed those purposes; I therefore say, do not take from the hands of the Irish Society, who are but the agents, the monies by which they are to work out those purposes which I have contracted to work out; do not take from me those funds, for it comes to this—by those funds alone I can execute the obligations that I have come under to the Crown.”

Now, my Lords, there is also another important question to be decided; whether, as the plaintiffs allege, the City of London are merely here as representing that paltry interest of the Brown Bakers' and the Coopers' Company; because, say the Skinners' Company, “We are obliged to bring all parties

here, and I do not make you a party because you contracted with the Crown, because you have any superintending or controlling power over all of us—something in the nature of Visitors' powers; but we make you a party because you are the Brown Bakers and the Coopers, you have a 99th share or 999th share, and we therefore make you a party." Now the Court has to decide what are the rights of the parties in this matter. Is not this a case in which, supposing it to be true that the Irish Society have not properly administered the trusts which the Crown reposes in them, in which you, the Skinners' Company, should have said, "Let us go to the City of London—let us tell the City, who have power to remedy this by removing all those gentlemen if they have done wrong;" and say, "Here is the Irish Society wasting the funds—you have contracted to execute certain purposes—the Irish Society was your engine to execute those—you ought to see that that engine does its work: it is giving pieces of plate; nay, it has done so for a century and a half—it is having dinners occasionally; nay, it is inviting the Lord Lieutenant or the Justices of the Court to come to dine with them—it is wasting the funds: we complain to you—and we shall see whether or not you set the matter right. If you do not do it we will go elsewhere." My Lords, do not let us forget the principles upon which the Court act; we are here upon a motion for an injunction. The Court will say, "Let us see whether you want it; for if it is not necessary for your protection, we will not give it you. You must show that your protection requires it." What is the first question the Court will ask? "Have you been to the City of London? because we see that the City of London contracted with the Crown. Have you complained to them? Have you taken any measures to protect your interest with them?" "No," say the Skinners' Company, "we do not go to them; we do not admit that they have any thing to do with this. They are the Brown Bakers and the Coopers. We do not recognise the City of London." Why that is a most important question to be decided at the hearing. Are your lordships called upon to decide that? You must decide upon it, if you give this Receiver and in-

junction. But are you called upon to decide it? Is there any thing pressing in the nature of the case, when, having a bill filed in 1832, the parties could without inconvenience to themselves be discussing the question of Receiver and injunction, in February 1836? Is there any necessity in the case? This book was printed in 1822, ten years before they filed the bill, delivered to every Company, every member of the Irish Society having a copy; and there is no dispute but that every adviser of the Company knew what was contained in that book, and saw that the Duke of Ormond was invited to dinner on such a day, and the Duke of Shrewsbury on another—saw that that was continued down to the very time when the book was published: that they should wait from the year 1822, and come in the year 1832 to pray for an injunction and Receiver, and then come in the year 1835 to ask your lordships to give them the injunction;—is this a case which calls upon your lordships, in the summary way of an interlocutory application, to decide? for you must decide, if you grant the motion, all the important questions that remain to be decided upon the hearing of the cause. I can understand how it was necessary for my learned friend to represent a dry, naked case of trustee and *cestuique* trust; but your lordships, seeing what is the nature of the questions that are to be decided at the hearing, will think that they are very grave questions—that the Court is not in the habit of deciding upon motion unless compelled. The Court will then say, Am I compelled? It is a perfect mockery to attempt it. What is this motion? This motion is a mere pilot balloon; it is feeling the pulse of the Court; it is a mere experiment—a mere speculation—a wise speculation, when once the idea of filing the bill at all had been adopted, to see by what means they could best, and in the most summary way, get the intimation of the Court's opinion upon those grave questions, which remain for decision at the hearing. But I am sure that your lordships will say that there is no case that calls upon you to decide those questions; and that the Irish Society are in that situation, that, in the absence of the Crown, you cannot take from them the means of working that

out which the Crown has reposed in them; and that if the Attorney-General were here, there is nothing in their conduct which requires it.

But, my Lords, we were told that all the other Companies, or the great majority of them, concurred in opinion with the Skinners' Company. We desired to know how that was; we required to see what those Companies would say. Accordingly, at the hearing which took place on the 12th December, 1835, there was a general muster of all the different Companies; they were called upon to say who appeared for the different Companies, and a great many counsel appeared for the different Companies. One would have expected, when the plaintiffs' case was closed, and when Mr. Knight, on the part of the Irish Society, got up, and said—"Now is the time for those of the Companies who mean to support the plaintiffs' case to come forward, before the defendants' case is begun—now or never;"—one would have expected to have heard a chorus of complaints, all the different counsel joining in one harmonious groan to the Court, praying to the Court to grant this injunction, entreating the Court to protect their property, and not to let this insolvent and penniless Irish Society,—for it has been put upon that footing,—go on receiving money which belongs to all these Companies. What was the result? That we had every one of them mute, with the exception of the plaintiffs. One gentleman said, that he appeared for the Butchers, who were indifferent upon the matter; another gentleman for the Vintners said that he thought the Irish Society managed the matter very well, and wished to leave it in their hands; and a third said, that he would leave the matter to the Court. And this is the complaint of the forty-five *cestuisque* trust. I know Mr. Wigram appeared for some eight or ten, or a dozen of them; but, of the rest, not one of them comes forward, even to tell your lordships that they wish this application of the Skinners' Company to be granted. And this is the case of pressing danger, upon which you are to decide those questions. I am sure your lordships will not decide them till you are in a proper situation, unless you see that the case calls for it and requires it. If you see that, then I admit that your

lordships must decide them. But the motion is, to bring into Court all the money, and for a Receiver, and for an injunction to restrain them from receiving any rents.

Now, my Lords, I might suppose the strongest case—for the case has happened;—I might suppose the case to happen again which happened at the time of the siege of Londonderry. I do not mean to say that that is very probable in the next month, or in the next two years; but I mean to say, that it is not impossible, and there are contingencies daily occurring. Suppose any such case arising, how are we to procure what is wanted? The Receiver is appointed; the Receiver goes to the Master, and says, I am a Receiver appointed for forty-six *cestuique* trust; they go to the Master; and then there is a suggestion, that it would be very desirable that a sum of money should be advanced for a certain purpose—to send muniments of war to Londonderry, in case of invasion or insurrection. Your lordships will deal with the case as you have found it. We have had that case of insurrection over and over again; and there may be a necessity for the City of London to send ammunition to the fort of Culmore or Coleraine. The Receiver goes to the Master—it is suggested that a certain number of brass cannon shall be sent. “No,” say the Skinners’ Company, “we should like bomb-shells.” “No,” another says, “let us have Congreve rockets.” I mean to say, that in every instance where there is a purpose to be served, if you appoint a Receiver, that Receiver is the person to do it—that Receiver only can do it, through the authority and sanction of the Master; and the Master can only act by having before him the *cestuique* trust. Now, I ask your lordships, whether that is not the truth?—whether it would not be necessary upon every occasion to have a discussion upon every case? Now supposing there has been an erroneous misapplication—supposing the Skinners’ Company had never acquiesced in it—supposing that none of the members of the Skinners’ Company had been members of the Irish Society, and doing the acts complained of,—will your lordships say that you will shut your eyes to the inconvenience that will arise by the appointment of a Receiver, instead of the body who now act; and do that in

the absence of the Crown, who is interested in seeing that all the purposes are carried into effect?

I will not trouble your lordships any further; the case in detail has been gone through so much that I will not refer to the different charters and so on; your lordships have had them all before you, and I am sure that your lordships will come to the conclusion, that, whatever be the nature of the interest of the Skinners' Company, it is a mere subordinate private interest, which your lordships will not, unless compelled, allow them to enforce against the due execution of those preeminent public interests, which the City of London have contracted with the Crown to carry into effect, and which the City of London will carry into effect. They ought to have the complaint brought before them of any Company, if that Company have any complaint to make;—but this motion is not for any practical purpose; it is an endeavour to get the Court to indicate an opinion upon some of the parts of the case, and in order to know whether to go on or not. But I trust that your lordships will disappoint the intentions of the parties, by refusing this motion, especially in the defective state of the record as it now stands.

Mr. RANDALL.—My Lords, in this case I also appear for the City of London; and, my Lords, if my learned friend who last addressed your lordships thought it necessary to make an apology to you for addressing the few observations which he did in this case on behalf of the City of London, I at least have a much greater reason to make that apology to you, coming as I do as fourth counsel for the City of London, after the very elaborate argument that has been delivered in this motion, and the number of counsel.

LORD CHANCELLOR.—Four for the City, but seven for the defendant.

Mr. RANDALL.—I begin by stating that an apology is due, my Lords, for my venturing to offer any observations to your lordships; but my extreme anxiety, from the importance of this case to the Irish Society, and to the City of London, who elect the Irish Society, the members of the Irish Society being also members of the Corporation of London, induces me to

hope that I shall receive your lordships' pardon, if I make a few observations. I shall be extremely short, and I shall of course endeavour to avoid, as much as possible, the repetition of every argument which has been already stated by those who have preceded me, because it would be very improper for me to occupy more of your lordships' time, or to repeat any thing so far as I can avoid it.

My Lords, the first observation to which I will draw your lordships' attention is, that this grant of the lands in question was a voluntary grant from the Crown; that the lands were vested in the Crown in fee simple, and the Crown therefore was fully entitled to do with those lands as it pleased. The Crown was entitled to grant them to any person whom it pleased, and the Crown was entitled to annex to that grant any condition or any obligation that it pleased. Then, my Lords, the Crown being so possessed of those lands, proposes to the City of London to make a grant, and, in making that proposal, it deals entirely with the City of London—it makes the proposal to the City of London—the negotiation is carried on between the Crown and the Corporation of the City of London. Treaties take place, and the lands are ultimately given, not to the City of London, but to the Irish Society, which is the body elected by the Corporation. Then, my Lords, as well before the incorporation of the Irish Society as after the incorporation, and even after the division of the lands, of which your lordships have heard so much, the Corporation of the City of London are constantly exercising the control, by giving directions in respect of the lands and their management, and the object and purposes for which they are granted. The only instance in which the Crown recognises the Companies, is in the license to grant in mortmain. The Crown, until that license, never in any way whatever refers to the Companies. The right or interest of the Companies has never been recognised in any way whatever, in regard to those lands, until the Crown makes the license to grant in mortmain. My Lords, if the Crown had intended to give any benefit originally to the Companies, any distinct and positive benefit, would the Crown, in granting this license to hold in mortmain,

(I respectfully ask your lordships,) have given the Companies a license to hold in mortmain only so much as the Irish Society should be willing to grant? By using those words in the license, I apprehend that it is quite clear that the Crown intended originally that the Companies should be benefited by this grant, only to the extent of so much as the Irish Society should think proper or should be willing to grant to them.

But then, my Lords, it is said that the Companies were consulted with about the undertaking. Now if your lordships refer to the Answer of the City of London, in folio 36, your lordships will find the only instance in which the Companies thought proper to take upon themselves, or to assume the right of independence from the Irish Society, or from the Corporation of London. In that instance where they did act independently, they communicated with the Privy Council—they communicated their dissent. But my Lords, what do the Corporation of London do with that? Here is the precept, in folio 36 of the Answer of the Corporation of London, in which it appears that the Corporation took upon themselves, in Common Council, to state that that was done under mistake, that the Companies who had made that communication to the Privy Council had no right to make that communication—and therefore they go on to deal with it as a mistake—and they appoint certain persons elected by the Court of Aldermen to communicate with the Privy Council. The only instance, therefore, my Lords, which appears upon those documents, in which the different Companies assumed to themselves any power of communication with the Privy Council, is afterwards taken up by the Corporation of London, and it is called, in the language of the precept, a mistake on the part of the Companies.

Now, my Lords, with regard to the Corporation acting on behalf of the Companies—for it has been said that, in reference to those transactions, the Corporation acted on behalf of the Companies—if the Corporation had acted on behalf of the Companies, would not the Companies have been consulted, (I put it to my learned friend) in every arrangement that took place? whereas the Companies never were consulted in any arrangement that took place; and with regard to the material



point, the advancing of money, if the Corporation had acted on behalf of the Companies, would not, as a natural course of things, the Companies have been consulted as to the amount of the monies to be advanced? But so far from that, the amount of monies to be advanced was always settled in Common Council, and the precept of the Lord Mayor, upon the act of Common Council, was issued to the Companies, requiring them to contribute the monies which the Court of Common Council had settled, as being necessary for the purpose of carrying on the works.

My Lords, I would wish to draw your lordships' attention to one precept, which is very remarkable—because it does appear to me to put entirely out of the question, and to be a complete answer to the argument on the other side—that the Corporation of London were acting on behalf of the Companies. The act of Common Council to which I allude is the act of the 22d Feb. 1611. If the Corporation of London had been acting in this manner on behalf of the Companies, it is impossible that they would have passed an act of Common Council such as that—for in the latter part of that act, the Corporation assumes to itself the right to dispose of all such lands as might be necessary, supposing the Companies would not advance the monies necessary for the purpose of carrying on the work—and “that as to such of the said Companies as shall continue their denial, or not signify their assent, the said Irish Society shall have full power and authority to let, manage, and dispose of such lands.” Now, my Lords, if the Corporation were mere trustees, or had been acting on behalf of the Companies, by what right could they have assumed to themselves to dispose of the lands belonging to the Companies? That does appear to me to be a complete answer (if answer were required) to the argument urged on the other side, that the Corporation of London were acting only on behalf of the Companies.

Then, my Lords, with regard to the advances of money, it has been observed that the Companies, *quâ* Companies, did not advance a shilling. The money was raised by individual members of the Company. And then it has been said that the Companies advanced all the money, or the individual members

of the Companies; but if your lordships will have the goodness to turn to folios 55, 97, 307, and 411, of the Answer of the City of London, your lordships will there find the sums of money which have been from time to time advanced and paid by the City of London, on behalf of this undertaking. They are stated there in general terms. My learned friend, Mr. Lloyd, has said that those sums were returned; but, my Lords, if your lordships will turn to 411 of the Answer of the City of London, your lordships will there find, that instead of any of those sums having been returned, there is an express denial that, according to the best of the belief of the Corporation, such monies were not returned—and search has been made for documents to ascertain, if the Corporation could, whether such sums were returned; and no such documents can be found.

Then, my Lords, after those sums enumerated in the folios of the Answer of the City of London to which I have referred, there was a fine of 70,000*l.* imposed upon the Corporation of London by King Charles the First. That was compromised by a sum of 12,000*l.* Now, though that may be attributed to other disputes between the Crown and the City, yet a portion of that, viz. 12,000*l.* was compromised for this fine of 70,000*l.*; therefore, if we are to consider this case upon the subject of advances of money, your lordships will see that the Corporation, as having advanced the money towards this undertaking, and having paid money in respect of those lands, are as much interested, if not greatly more interested, than the Skinners' Company, and because, if the quantity of interest which the parties have in those lands is to depend upon the monies which have been advanced in respect to the lands, then there will be no difficulty in making out that the Corporation of London has, in point of fact, made equal, if not greater advances of money, in regard to those lands, than ever the Skinners' Company, or any other of the Companies made.

Then, my Lords, supposing it to be material to consider the advances of money that have been made on the part of the Companies, it must never be forgotten that the monies were raised by taxation—by a compulsory process. It appears to me, therefore, to be a mistake on the part of my learned friends,

who inadvertently observed that the Companies were called upon to contribute as much as they should be disposed to contribute. Now all the documents that have been so frequently referred to in this case, show that the Companies were not voluntary contributors, but were required to contribute, and were, in point of fact, taxed.

Then, my Lords, with regard to the division of lands, I would observe, that this proposal for the division of lands originally emanated from the Corporation of London. Notice was sent to the Companies by the Corporation of London, of this being required on the part of the different Companies; but notice was sent to the different Companies voluntarily and spontaneously on the part of the Corporation of London, to the effect of asking them whether they would take lands in lieu of money, and that was in 1611, and it is not till the year 1613 that we find, according to the plaintiffs' own statement, that any division of the land was required or desired on the part of the Companies. Therefore, two years after the notice had been circulated voluntarily and spontaneously by the City of London, the Companies seemed to desire a division. But how was this division carried into effect?—Was it carried into effect by the Companies? No such thing. Your lordships will find, that all the division of the lands, and every thing relating to the division of the lands, took place in the Court of Common Council—every thing with regard to the division of the lands was managed by the Court of Common Council. It was done under the superintendence of the Court of Common Council. And how was it carried into effect? By lots drawn in the presence of the Court of Common Council, and according to the directions of the Court of Common Council. Then, my Lords, it was not carried into effect without the license of the party who was most materially interested, and was entitled to be considered—without the license and leave of the Crown. Even then, in 1614, when this took place, it was then thought, when the original grant of the Crown was recently in the memory of the parties, and that opinion was acted upon, that the arrangement proposed on the part of the Corporation of London, and desired by the Com-

panies, could not be carried into effect, without the leave of the Crown ; and the leave of the Crown was obtained.

My Lords, some importance is attached to that part of the award of the Commissioners, in which it is stated that the lands not divided were not divisible, in consequence of their peculiar character, and that the rents and profits may be divided amongst the Companies. Now, a good deal has been said upon that, and a good deal more will be perhaps observed upon that ; but this is the observation of the Commissioners only. They are, it is true, elected by the Court of Common Council ; but it is an observation of the Commissioners only, and there was an Act of Common Council confirming that report. I will give my learned friends the benefit of that. But there was a third party then. Supposing the Corporation and the Irish Society to have assented to that, there is a third party, who was as much interested, and had as much right to have a voice, with regard to that part of the Report of the Commissioners, as in regard to the allotment of the lands—that is the Crown. Now we do not find that any thing was done upon that till the charter of Charles the Second ; but when that charter is given—when Charles the Second gave his charter to reinstate things as they were before the forfeiture by means of the Star Chamber, we find that in that charter the Crown, so far from saying that the reason why those lands were not divisible was because they were of an indivisible character, states that they were retained in the hands of the Irish Society for defraying the general charge of the general operation of the plantation. Therefore, my Lords, that observation, which is to be found in the Report of the Commissioners, did not receive the sanction of the Crown. The Crown, in point of fact, when it came to deal with this question, did not sanction that part of the report ; but it directed what should be done with reference to those indivisible lands, and what was the object of their being retained by the Society. Instead of the rents being handed over to the Companies, they are stated, in the Act of the Crown, to remain in the hands of the Society, for the purpose of the general operation and general charge of the plantation. Then, my Lords, I am at a loss to

discover how the division of lands, and the payment of those annual sums, can be construed to give to those twelve Companies any right, as *cestuique* trust, to the lands that remain in the Irish Society.

Then, my Lords, the plaintiffs have referred to the petitions of the Corporation, and of the Irish Society in the time of King Charles the First. The first was in March 1632; and there your lordships will look in vain for any thing like the statement that the Irish Society, or the Corporation of London, were trustees for the Companies. I say that of the first petition of the Irish Society. In the second petition, which was presented in 1636, there is a statement, that the Irish Society and the Corporation were trustees for the Companies. But then, my Lords, your lordships will, I apprehend, not scan too nicely the language of a petition, having regard to the objects and the purposes for which it was presented. Your lordships will look to the purpose for which it was presented: it was to get rid of an illegal proceeding; and the Corporation and the Irish Society thought themselves justified in making the statement, which should probably be the means of restoring them to their rights again. But that petition undoubtedly is incorrect in one respect; because that petition states, that the Companies advanced all the money, and that the Corporation did not advance any money. Now the fact there can be no doubt about. The fact is entirely otherwise; and if we find, in one respect, that that petition states a circumstance which is not true, it shows the loose character of the petition; it shows the loose way in which it was drawn up: and I apprehend that your lordships will not be disposed to put much weight upon that petition. But then it must be remarked, that the Irish Society, at that time, was composed of the members of the different Companies; and, therefore, if that petition is to be evidence in favour of them now, it is evidence created by themselves; and it is a statement, in reference to their being trustees, which appears to me to be contradicted by every document of a solemn character which is disclosed in these proceedings. The license from the Crown, the deed of feoffment, reserving the rental, are all strong evidence to show,

that there was nothing in the nature of a trust between the Irish Society and the Companies.

Then my learned friend, Mr. Lloyd, referred to various documents between the years 1649 and 1653, which he stated, to show that the Companies were consulted with in reference to those petitions, and all the other negotiations for the purpose of letting the lands, and that the different Companies were at that time materially interested. There is no doubt they were interested in the lands that had been granted to them, and I believe that your lordships will find that those documents show that the different Companies then were consulted with by the Corporation in respect of their interest in the land so divided ; because the object of the application to King Charles the First or to Cromwell was to reinstate things as they were previous to the time when the proceedings took place in the Star Chamber.

Then, my Lords, with regard to the payments that have been made to the different Companies : from the year 1614 down to the year 1831, or 1830, when the last payment took place, the Irish Society paid, from time to time, monies to different Companies ; they were never called upon to account, till a very recent period, in respect of the monies in their hands, to ascertain whether or not the dividends paid were the full amount of the rent. They were never called upon to state their accounts, to ascertain whether that was the fact ; but the Companies received dividends from time to time, and in giving them those dividends, it appears to me that the Irish Society did no more than they did when they made a division of the lands ; they paid them so much as they could spare, after defraying the general expenses and general charges incident to the plantation, and to the furtherance and the maintenance of the objects and purposes. Therefore, my Lords, I do not see how the payments of dividends, in that view of the case, having referred to the then usage (for your lordships must take all the usage both on one side and the other)—I do not see how the payment of dividends, under these circumstances, can create a trust, as is now insisted upon, on behalf of the Skinners' Company and

some of the other Companies, who support my learned friend in this application.

Then, my Lords, if your lordships should hold those Companies to be *cestuique* trust, your lordships will see at once what the consequence of that will be ; because a *cestuique* trust has a right to receive the rents and profits, and to dispose of the land. He has, in point of fact, the *jus habendi* and the *jus disponendi* ; he may dispose of his right, or sell his right, or convey it in any way he pleases. If these lands are conveyed to A B and C, I do not see how the objects and purposes of the Crown can be effected ; supposing those lands are to be conveyed from one to another, it would throw difficulty in reference to the management of this trust, and the confidence which the Crown reposed in the Corporation of London, and now in the Irish Society, which I do not see how it could be reposed.

Then, my Lords, what is the title or interest of the plaintiffs ? I cannot conceive how they can be *cestuique* trust—that appears, for the reasons I have stated, to be entirely negatived by all those solemn acts to which I have referred ; every act of a solemn character, so far as I have been able to see, negatives the supposition of their being *cestuique* trust. Then can they be tenants in common ? It has been stated by one of my learned friends that they might assume that character : why, I ask again, where is their title as tenants in common ? If A purchase lands, or lands are given to A, and B, at A.'s request, lends him money to improve his estate, B is not tenant in common with A. If a party advances money to improve an estate, the highest interest he could have would be a lien upon the land for money advanced ; he might be a mortgagee, but he would have only a lien in equity for the money advanced. Then, if he had a lien in equity, I admit that he might come into a Court of Equity ; but he could not come into a Court of Equity in this shape. If he have any interest, it is only a lien in respect to the monies advanced : he has mishaped his record ; he does not come here asking for an account of monies, and interest of monies, expended by

him in respect of those plantations, but he comes here either as *cestuique* trust, or tenant in common. Then, my Lords, if I am right in showing that the plaintiffs' title or interest, whatever it may be, is neither as *cestuique* trust nor as tenant in common, I apprehend that the plaintiffs must fail in this record.

Now let us consider for one moment what is the title or interest of the Irish Society. The title of the Irish Society is absolute at law, whatever it may be in equity; and whoever may be entitled to the surplus rents, their title is absolute at law, and it cannot be disputed now. Then in regard to those rents, they have, for upwards of two centuries at least, exercised an uncontrolled discretionary power. Now if the plaintiffs make out their title by usage—if they refer to the acts of the parties for the purpose of showing that by usage they have a title of some kind or other to those rents and profits—then I would say, that the Irish Society has by usage uniformly had a discretionary power over this fund. And then, my Lords, it becomes material to consider whether, even supposing the Irish Society, in that view of the case—supposing that by usage they should be considered to be trustees—yet this Court will not, even in the case of a plain trust, interfere with the discretionary power of the trustee: where a trustee acts corruptly, that is different. In the case of the Attorney-General *v.* the Governors of the Foundling Hospital, in 2d Vesey, jun., it is said the Court will not, except where a trustee is shown to have acted corruptly, interfere with the discretion of the trustees.

Then, my Lords, in this case you are asked to appoint a Receiver; and one of the arguments used is, that the Irish Society have no funds wherewith to answer any demand that may ultimately appear to be due from them when the cause comes on for hearing. Now, my Lords, the fact of their not having funds wherewith to answer any demand that the relators may have against them, is a very good and cogent argument where there are merits; but it is beginning at the wrong end to ask the Court to appoint a Receiver, because certain persons, who are alleged to be trustees, may not have any



funds to answer the demand made against them at the hearing. They must first show merits ; and if the plaintiffs cannot show a title, and such a title that the Court can take cognizance of, then to say that the Society have no funds wherewith to answer what the plaintiffs may at the hearing show to be due to them, is, I apprehend, an argument of no avail.

Then, my Lords, you are asked to appoint a Receiver by persons whose title and interest appear to be very indefinite and unintelligible. You are asked to do it by persons who have acquiesced in the course of proceeding now adopted for two centuries. You are asked to do it on behalf of persons who have not only acquiesced in these acts, but were the joint actors in them ; two members of the Skinners' Company were, till one thousand eight hundred and thirty-one, members of the Irish Society, and in point of fact joint actors in it ; and now they come here to complain against the Irish Society, and ask your Lordships to interfere by way of Receiver.

My Lords, it is upon these grounds I have ventured very respectfully to ask, in common with my learned friends, that you will refuse this application ; and under the circumstances of the case, I think you will refuse it with costs.

Mr. JEREMY.—My Lords, I appear on behalf of the Stationers' Company ; and I am instructed to say, that the plaintiffs never applied to my clients in any way to participate in this suit ; and my clients, the Stationers' Company, are not aware of any sufficient misconduct on the part of the Irish Society, to justify this very heavy and expensive proceeding. At the same time, they do not anticipate the result of the evidence ; and I am instructed to inform your lordships, that my clients appear in consequence of a notice served upon them, and whichever way you decide, they ask for their costs.

[*Reply.*

## REPLY.

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Sir WILLIAM FOLLETT.—I believe, my Lords, the time has now come when the duty devolves upon me of addressing your lordships in reply in this case ; and probably, in the outset, I should state the grounds upon which the motion was put by me, and I do it the more readily, because some of my learned friends, and particularly Mr. Jacob, have anticipated that in reply some new ground of motion was intended to be put forward by me—that it was not intended to stand precisely upon the same grounds ; and with deference to your lordships, I will restate the grounds of the motion.

My Lords, the grounds upon which I apprehend the plaintiffs are entitled, are these. That the Irish Society, the defendants in this case, are trustees for the plaintiffs—that they held this property as trustees for the Companies—and that they now set up a claim inconsistent with that character—a claim to expend the rents and profits derived from certain parts of this property, according to their unlimited discretion—and moreover, and independent of this, they claim to expend it according to their own discretion, to any extent, upon what they call public purposes ;—and that they have been guilty also of gross mismanagement of the funds of the Corporation.—That there has been an expenditure that cannot be justified in any point of view.—That it has continued and is continuing, and is admitted to be so by their Answer ; and if that expenditure be admitted by them, and it is determined to be continued, we are entitled, in this stage of the cause, to ask

your lordships to grant the prayer of this motion. That was the ground of motion originally taken by me when I opened this case.

My learned friends have now addressed your lordships, seven of them, not professing all to appear for the same parties, but all arguing upon the same grounds ; because my learned friends who appear for the City have taken the same view as regards the Irish Society, and my learned friends who appear for the Irish Society have brought in the claims of the City. I do not mean that their arguments are consistent the one with the other ; there is that advantage, where a great many counsel appear, that sometimes they have adopted arguments totally inconsistent with each other ; but though my learned friends have gone over this case so elaborately, and though so large a portion of your lordships' time has been occupied,—and it is the interest of the defendants to raise whatever doubt or cloud they can upon this case,—yet I apprehend you will not, because seven of my learned friends have put forward a great number of propositions, and attempted to raise doubts and difficulties, you will not, upon that ground, refuse the prayer of this motion ; because I think I shall be able to satisfy your lordships that this is a question depending upon written documents, not many in number, and not very voluminous—that it must be reduced to a simple question of fact, depending upon those documents, and depending upon a very small degree of evidence indeed. It is not a case that required all this elaborate argument and discussion—the documents are not many nor long—the evidence is scarcely any—the point is a single one to deduce from those documents—and I am very much mistaken if it is not one very clear indeed—it is not a doubtful proposition, but one very clear.

Then let us see what is the answer they set up ? The first answer is this :—We are not trustees for the twelve Companies at all—we were appointed for some public purpose. We have an unlimited discretion and power. We have a right to do with this property what we like. You have no right to call upon us for any account, or to make any application against us. We are trustees for a particular public purpose ; and (as

a branch of the same argument) the Attorney-General ought to have been made a party.

Now what is the next? The next is, that the City of London have an interest inconsistent with this motion. What interest? We have heard the counsel on all sides, we have heard the City of London, and their answer; and what is it they claim? I ask your lordships, having heard all the counsel on both sides here, who is to define the claim that the City of London has set up? My learned friend, Sir Charles Wetherell, says, "Visitors." What does Mr. Randall and the other parties who appear, say? Visitors? No. They say they have some interest in the original advance of money—that it was their funds, and that the statements they made in the petition to the House of Commons, and in the case, was a falsehood, to avoid the payment of some fine; that they made a false statement to the House of Lords and Commons, and in the cases, to avoid a fine being levied upon the City. Do the City say they have any interest in this fund? do they say that they have any right to ask these persons to account to them? I understood Sir Charles Wetherell to disclaim it. What is it they say? That they are Visitors, and that we ought to have applied to them instead of applying to this Court. Take it so, and I will take my learned friend Sir Charles Wetherell's statement to be, that they are Visitors, and that we ought to have applied to them before we came to this Court. My learned friend, Mr. Knight, at the time I was addressing your lordships before, complained that I had not put forward specifically and clearly what I understood the claim to be on the part of the Irish Society. I said they made a claim to have some control over this fund wholly inconsistent with their character of trustees. My learned friend, Mr. Knight, says, "What claim?" Why, I can scarcely make out from your Answer what the claim is. I do not know whether you claim to have an unlimited disposal. I do not know what you mean to say. I see in your printed book that we have no claim to divide the lands with you; but you set up an inconsistent claim. Let us see what it is, because we are not now in doubt. We have had the statement of the Irish

Society, and we have had the statement of Mr. Law, who appeared to-day for the City of London; and we have the statement of the other parties, which will not leave any doubt. First, I will take Mr. Knight's statement; and I hope he will pardon me for reading, from a very correct report of his speech, what he stated upon the subject,—“ Let me pause here for a moment, to say, that the Irish Society as now constituted, and since its hapless reformation ”—(my learned friend supposes that it was the reform, by taking out of the Irish Society the members of the twelve Companies, that led to this proceeding; and my learned friend has used that reform of the Irish Society in various ways in the course of his argument, and my other learned friends also. Sometimes it is said that the admissions made by the Irish Society are no admissions at all, because it consisted of the members of the twelve Companies. Then it is said that you have made an admission that you have expended money without authority—without adverting to the argument, which says, that they were members of the twelve Companies. If that applies one way it cuts the other; but I do not wish to go into that—it is this passage that led me to it;)—“ reformation in the year 1831 and 1832, have been always willing and ready to tread in the steps of their predecessors; and after providing for those prior and permanent purposes of public good, which were necessary, according to their honest discretion and judgment, to be provided for, according to the tone and intent of the charter, they were always ready and willing, in conformity with that course which had been adopted, to divide the surplus between the twelve Companies.” That is the first statement.

Now, my Lords, it goes on to say,—“ The Skinners' Company have thought fit to file this bill; and it will be for your lordships to say, if this suit should be carried on to a hearing, whether or no this Court has any right or power to direct the diversion of one single shilling of these rents from public purposes, and the public good; whether you can by your decree say, that this Society, thus constituted, shall limit their discretion; that whatever may be their opinion of the exigencies of the public service, of the exigencies of police, either municipal or more extended, or of the exigencies of the Protestant religion in Ireland, they are not to

exercise that discretion which the Royal Charter has given them, but that they are to confine themselves within certain limits, and to hand over not only a certain surplus, but to hand over every thing for the private purposes of the Skinners' Company, and other Companies." That is the first statement of my learned friend. Again, my Lords, before I comment upon that, I will beg to call your attention to the mode in which he puts it;—again he reads this passage from the Answer: "The Irish Society submit to the judgment of the Court, whether they became trustees of the hereditaments comprised in the charter or letters patent of King James the First, or any of them, for said plaintiffs and such other Companies as in said bill mentioned, or any of them, to any and what extent." Now again, my Lords, my learned friend says this—he is speaking of the division of the lands now held by the Companies, or which were originally held by the Companies, some are still held by them, some are sold, and some are in private hands—I mean that part of the land granted by the Crown in the county of Londonderry—part of them have been conveyed away, and are now held by private individuals, and a part remains in the hands of the Companies—he says, "This was done a great many years ago—it was an act of the Corporation"—I suppose he means the City of London,—“approved of by the charters; and neither the legislature nor the Crown have ever complained of that Act. But perhaps it is not perfectly clear that the Irish Society were entitled to do that at all. It may not be clear that it was an exactly regular and justifiable exercise of their power to deprive themselves to any extent of the discretion vested in them, by apportioning any part of the lands to the twelve Companies. I have no desire, however, to shake or question their power to do that act; nothing can do that, considering the length of time that has elapsed, short of a Parliamentary investigation. It is likely that their titles to those allotted portions, considering that they have in many instances been made the subject of sale and conveyance, cannot be questioned, and the probability is, that even those Companies that still retain the possession of their allotments, may not be exposed either to an inquiry how they, upon their separated

portion, have carried on the duties imposed upon the undertakers by the terms of the original grant, or to an inquiry how far the Irish Society were justified in thus allotting the lands. We have nothing to do with that now, and it is probable that their titles may be safe. If the matter were new, however, it is obvious that it would be liable to considerable observation and question, and it is possible, though not of course on the part of the Irish Society, that that matter may not rest here; that, however, I have nothing to do with. But to whatever extent the Irish Society may have deprived themselves of that discretion, or limited their means of exercising it by giving up certain portions of the estates that they held, it is quite clear, that it did not take away their discretion as to the residue; it only crippled their means, and probably rendered it, if I may use the expression, more imperative upon their discretion, to consult liberally and largely the public good, with respect to their means thus limited and thus restricted. The allotment of the allotted portions left them with less means—so much the more ought those means to be devoted to the public good; and I avow that, according to my present impression, if I, as counsel, should ever be called upon to advise the Irish Society, with respect to their future administration of the revenues of the estates that have been left, I should advise them well to consider, not whether the apportionments of money to the twelve Companies for their own private purposes ought to be increased, but whether the fair and just exercise of their discretion may not require a larger and more liberal devotion to the public good. Undoubtedly that must be to be considered. My Lords, as I have said, we are not now to consider whether the Society were or were not justified in making those allotments of estates. It is remarkable however that, in allotting the estates, there were particular reservations in the conveyances that were made to the several Companies."

Now, my Lords, that is the statement made by my learned friend Mr. Knight; and my learned friend Mr. Law to-day has said, that the conveyance of the lands by the Irish Society to the twelve Companies of London was a merely gratuitous act—that it was an act of bounty on their part—and so was the

apportionment of the surplus rents of the divided lands ; that they were the parties to exercise their discretion ; and that they did not take the lands as trustees for the Companies, nor do they now hold them as trustees for the Companies.

My Lords, I will take from my learned friends themselves the statement of the claim made on the part of the defendants. The claim that they make is totally inconsistent with their filling the situation of trustees to any extent for the plaintiffs upon this record—it is an utter repudiation of the trust—it is a claim to exercise, to an unlimited extent, their own discretion entirely—And, my Lords, what is it that they claim? [Is it that they have received this property as trustees solely and exclusively on the part of the Crown, or on the part of the public? That is not the claim they set up. It is a claim to do what they please with the property, according to their will and pleasure, and give over the surplus. But if they have a right to dispose of the whole of the fund, that is giving to them the absolute disposal ; it is not giving it to them as trustees, in which character they are not entitled in any way as regards the Companies, to dispose of the funds. The first view we have to meet is the one I have presented to your lordships, namely, that they are not trustees in any way whatever for the Companies. Now, they say, we are making an application to your lordships in a preliminary stage of the cause, to decide a question that would be better decided upon the hearing. I apprehend that this motion may be decided by your lordships without deciding the cause, and that your lordships, according to the practice of the Court, will grant this motion, being bound, according to precedent, to grant it, upon the facts stated, without deciding the main question in the cause. But if they choose to raise the question now, and say they are not trustees—if they put their resistance to the motion upon that ground, and if all the facts and all the documents are before your lordships, as they are—if all the evidence is before your lordships, as it is, and just as they will be upon the hearing, I do not know that it makes any difference, and that the real question between the parties may not be decided by your lordships just as well upon the motion as upon the hearing of the cause. That is the



course they have taken—they have put forward the documentary evidence ; and the ground that they take is, that they are not trustees for the Companies.

Now let us see how that is made out. My learned friend, Mr. Knight, says—"You admit that this Society once had certain public purposes to perform ; when did they cease to have those public purposes to perform ? You admit that the King's object was a public one, and that this Society was created for that purpose ; when did that cease ?" Now I do not admit that. There is a fallacy in my learned friend's argument, and contradiction in that part of the argument, by the view taken on the other side. I do not admit that this Irish Society ever had any public purposes to perform entrusted to them, if by the public purposes my learned friends mean that they had ever any control over the property, under the grant by the Crown, to apply these profits or revenues according to the discretion of the Society. If that is what is meant, I say they never had any such public purpose to perform ; and again my learned friend assumes that I have admitted that this Society was created by the King to carry into effect the King's object. I admit no such thing, I believe no such thing ; and it is quite inconsistent with the view taken by others of my learned friends,—Mr. Kindersley, this morning,—and by themselves, the Irish Society. It was not created by the King to carry into effect his object ; it was a Society, as they have said, emanating from the City of London ; to use Mr. Kindersley's words, "It was a machine of the City of London ; the object was to have a machine to assist the persons contracting to carry on the work ;" it was suggested by the Common Council of London, formed by them, and proceeding from the City, and not appointed by the King for any purpose of the King, nor for any public purpose ; it was to guard the interests of the settlers in the place, but not to protect the interests of the King in the planting of the North of Ireland.

In order to see this, I must carry your lordships back to the history of the transaction. I am aware you have been wearied by the constant allusion to the older documents in the case ; but I think it right to carry back your minds for a moment to

the history of the case. I do not admit what Mr. Knight assumes was admitted, that this Society proceeded from the King, or was founded for public purposes. How did it originate? You remember what was read to the Court at the opening of the motion. The plan of the King was, to grant the forfeited estates in the six northern counties of Ireland to any English or Scotch Protestants willing to settle there. Now one would suppose, from the argument of the whole of my learned friends, that the King's object was confined to granting lands in the county of Londonderry, which the City of London had subsequently taken : but the object of the King was to grant the lands in the six northern counties. The first document was the proposal of the King, which is contained in the first pages of this book, addressed to persons willing to undertake the settlement generally, and not addressed exclusively to the City of London, or confined to the county of Londonderry, but applying to the whole of the six northern counties, and addressed to any of the King's English or Scotch subjects. Now it was the general object of the King to introduce the Protestant religion. That was the great public purpose, to have this part of Ireland planted with English or Scotch subjects. That was the great object, no doubt, to have the counties of Fermanagh and Tyrone planted like Londonderry ; but I deny that there is any trace in any of these documents that that purpose was not intended to be carried into effect, and was not carried into effect by the grant of the lands to the different settlers, the settlers taking the lands granted upon the terms, and for the objects there stated ; those terms being, that they should build their castles upon the estates, and collect their tenants round those castles—that they should erect fortifications, and build houses, and carry into effect the object the King had stated ; and these conditions are imposed applicable to the different classes of persons that held the lands. My learned friends have been eloquent upon the introduction of the Protestant religion into the North of Ireland, and the object of the King in so doing : but can they contend that it was confined to the county of Londonderry?—that the great object of the King, in colonizing the North of Ireland,

was confined to that county? The object included the whole six counties, and the documents in the first six pages of this book apply to the undertakers in every county. Will they say that those gentlemen now holding lands in those counties are holding them upon public trusts? I could mention the names of many gentlemen who are holding lands granted to their ancestors at that time, and which have been in their possession without alienation from that time, paying the fee-farm rent. Do my learned friends mean that those gentlemen hold those lands for any public purpose, or that they are bound to contribute, as Mr. Kindersley says, brass ordnance and shrapnel shells? The King's object was carried into full effect when he got Protestant gentlemen to take lands so granted in the North of Ireland. It is distinctly stated that the object of it was to get Protestant settlers there; and when they were there, his object was carried into effect.

Then, my Lords, comes the county of Londonderry. There are certain motives held out to the City of London to undertake the settlement of that particular county, the county of Derry; the advantages are held out, and pointed out specifically to the City—the peculiar situation of the river for trading; and their recollection is called to the fact, that the citizens of Bristol had formerly planted Dublin, which was the most prosperous part of the King's dominions. It would hardly be contended now that the property granted to the citizens of Bristol in Dublin was subject to any public trust. The object was to get them to settle upon those lands, and having got them to settle there, and having brought their tenants about them, the English or Scotch, and prevented the Irish holding them, the object was completed. It cannot be supposed that the King meant to entrust the defence of the county of Londonderry to the City of London, and that they were to find ammunition, and provide troops. The duty that they were to perform is written in plain language. The King stipulates on one side, and they stipulate on the other—it is not left to conjecture; you have the original stipulations, and the original undertaking: it is not left to the lapse of time; you have the written document, and upon that it is the Court, I apprehend, are called to decide. These

motives are communicated to the City of London;—what takes place then? It is said that the City of London were not very willing to undertake it according to the terms proposed. Probably they were not; probably they felt themselves obliged to do it, in consequence of the position they stood in at the Court: they were not very willing to do it. Then they make a proposition to the twelve Companies to get deputies appointed to consider of it, and to send persons to Ireland to inspect and examine it; and there is a report made by the persons so selected in favour of the settlement of this part of Ireland.

My Lords, we are coming now to the history of this part of the transaction, in order to see whether this Society is, as my learned friends say it is, a society appointed by the Crown to apply the rents and profits of the lands forfeited, which the King was to grant,—not only the lands they now have, but the lands the King was to grant in Derry, to be held in perpetuity, to apply the rents and profits in any way they thought good for the benefit of Ireland; or whether it is not a grant to the Corporation to hold for those Corporations, in the same way as the King had granted to other Corporations or individuals. The twelve Companies agreed to advance the money; and I was much surprised at my learned friend's contending that the twelve Companies had not advanced the money. I apprehend they have advanced every farthing of it. It is true, as the Recorder has stated, that the advance was made by the members of the twelve Companies; and no person could be a freeman of the Corporation unless he was a member of one of the twelve Companies; and therefore, no doubt, there was a most intimate union and connexion between the City of London and the twelve Companies, and that the Corporation of London, as my learned friend has stated, was nothing but an emanation of the twelve Companies: that was my learned friend's statement, and no doubt it was correct. Then they, being so applied to, applied to the twelve Companies, and they agreed to advance the money. I am wishing to avoid confounding the two things regarding the claim of the Crown, and the claim of the City. I am referring to the claim set up by Mr. Knight, that the Irish Society had some trust—that they were consti-

tuted for a public purpose by the Crown; and not to protect the interests of the grantees of the Crown, who had advanced the money. The Companies agreed to advance the money. What takes place? A meeting takes place between the City of London and parties on behalf of the Companies: they agree upon certain terms, and those terms are reduced into writing; and an agreement is then made on behalf of the City of London and the Crown to take those lands. Those articles of agreement are set out at considerable length. I was not present at this part of the argument of my learned friend, and I think the report, in this respect, cannot be quite correct,—I mean as to the articles referred to. He refers to some of the articles, to show that there were some duties imposed upon the grantees that were to continue. Now the articles mentioned in the note certainly are not articles of that description; and I cannot find, in any one part of this agreement, any thing that tends to show that the City of London or the Companies were not to receive those lands, precisely in the same mode as the other undertakers are to take them, to hold them in perpetuity, subject to a rent to be paid. Now what article is it that my learned friend says shows any thing like a perpetual obligation imposed upon these parties? I find that they are to build a certain number of houses; and if it should please the King's Majesty, at his charges, after some good proceeding in the plantation, to erect and maintain a bridge in perpetuity, for a common passage over the river between the town and county of Coleraine,—I find that the measure of the land is to be taken, and the rest to be assigned to the City, and to be cleared from all particular interests, except the Bishop of Derry's inheritance, and except certain portions of land to be assigned unto three Irish gentlemen residing in Coleraine, who were to be freeholders of the City, and pay them some small rent—the same portions and rent to be limited by Commissioners. I find nothing at all to show that any duty whatever was imposed upon the City, except that which I pointed out to your lordships in the opening, that the City were to have the Castle of Culmore, "and the land thereunto in fee-farm, they maintaining a sufficient ward of officers therein." I find nothing

but that. I understand my learned friend referred to the 7th Article—"That the woods, and the ground, and soil of Glanconkene and Killetrough, extending from the county of Coleraine to Ballinderry, be wholly to the City in perpetuity, the timber trees of those woods to be converted to the furtherance of plantation, and all necessary uses within Ireland, and none to be made merchandise." This is one I called your lordships' attention to; and I think that meets the observation of my learned friend: the same thing follows through all the documents. You will find again, in several other documents, restrictions respecting the timber; and it is very important, because it meets the observation of my learned friend with respect to the reservation of the timber in the conveyances to the Companies. The next is the 9th—"That the City shall have the patronage of all the churches as well within the said city of Derry and town of Coleraine, as in all lands to be undertaken by them." I do not at all know how my learned friends argue on that. The City were to hold the advowsons in perpetuity, and there was a grant to them of that as well as of the land. The 17th Article is—"That the City should have the like liberty of fishing and fowling upon all that coast as other subjects had; and that it should be lawful for them to draw their nets, and pack their fish, upon any part of that coast that they fish upon, and carry the same away; and that they have the several fishing and fowling in the city of Derry and town and county of Coleraine, and all the lands to be undertaken by them, and in the river of Loughfoyle, so far as it floweth, and of the river of Bann, unto Lough Neagh." Then the 22d—"That the City shall have such further liberties to Derry and Coleraine as upon view of the charters of London, the Cinque Ports, and Newcastle-upon-Tyne, or the city of Dublin, should be found fit for those places."

Your lordships will observe, first of all, that I do not find, as I have read this, any thing whatever to show any burthen imposed upon the City of London at all; they are to have the castle of Culmore upon the consideration of keeping a sufficient ward there, but nothing else. Then comes this—"That sufficient forces should be maintained, at the King's charges, for

safety of the undertakers for a convenient time." That is one my learned friend alludes to—that is a stipulation on the part of the Crown, that the King will protect those that go over, for a stated time. And we know, from the history of the times, that that was necessary, because it was not likely that the Irish would let them take and keep possession of their lands without a force to protect them. Then another is, "That for settling and securing all things touching the said plantation, His Majesty would give his royal assent to Acts of Parliament, in England, and the like in Ireland, to pass." The agreement is founded upon the footing that an act is to pass upon the basis of those articles; and then the 26th is—"That the City should have time, during the term of seven years, to make such reasonable demands as time should show to be needful, but could not presently be foreseen." What is the meaning of that? The City are to settle certain lands in Ireland upon the terms here set out, with the limitation of a further grant of time for seven years. And then the last is, "That the City shall with all speed set forward the said plantation in such sort, as that there should be sixty houses built in Derry, and forty houses in Coleraine, by the 1st of November then next following, with convenient fortifications; and the rest of the houses, with the fortifications, should be built and perfected by the 1st of November, 1611."

Now here is the agreement; there is no conjecture to be made upon what is to be done between the parties—here it is. Here are very distinct articles of the agreement between the City of London and the Crown; and I ask your lordships if there is any thing in it but a simple grant of Crown lands to the City of London, to be settled and taken by the City of London, upon their paying to the Crown a fee farm rent, and buying the ground as the other parties had done. Then where is the trust? These are the lands that my learned friend says are for public purposes in Ireland. My learned friend says that these lands that the King undertakes to grant to the City of London, and for which the Companies are to advance 15,000*l.*, never were intended for the benefit of the Companies, or for the City of London, but that the City of London were to be put there as trustees for the Crown, and that the whole of the income was to be distri-

buted for public purposes. Where is there the slightest shadow of evidence for that? Is it not a pure agreement on the part of one to take, and the other to grant, in consideration of a certain sum of money, and the whole to be completed by 1611? Where are the public trusts? What is the next step? The agreement was made by the City of London before the formation of any Society at all. How does the Society originate? It originated in a report drawn up and made by certain persons interested in making the inquiries on the part of the Companies and the City of London; and they report, "That it may be convenient for protecting the interests of the undertakers"—(I beg your attention to this; there is not the slightest reference to any public purpose)—"that a Society should be formed from the Common Council of London." At the time the articles of agreement had been entered into, there was a stipulation for an Act of Parliament, and it must therefore be supposed that the act had passed. At that time there was no Irish Society at all—at the time the bargain was made, or at the time the act was supposed to pass, which passed upon the basis of these articles of agreement. Where is the public purpose? Where is the purpose to sweep away the whole of these lands, notwithstanding the Act of Parliament held they must be granted out? Where is the authority to give none to the Companies, if they do not like, and apply it to public purposes, for the furtherance of the Protestant religion, or the promoting the plantation?—there is not a trace of it.

Then how does the Irish Society claim? They claim from the Companies of London? Your lordships will understand me now, that I am not taking a distinction between the Companies and the City; they claim from the City of London and the Companies, and they propose to protect the interest of the undertakers by the formation of this Society. My learned friend, Mr. Kindersley, admitted it was a machine emanating from the City of London, to protect the interests of the City of London; and how constituted?—constituted by the Members of the Corporation of London, a Committee, to use Mr. Knight's own words, "a Committee of the City of London, or of the Common Council of London,"—elected by



them and appointed by them for the purpose of—what? To carry into effect the public purposes of the King? No; to watch over the interests of the undertakers, and to protect their interests, the Society was formed.

Then there is a grant of a charter to that Society in the time of King James the First. He grants to them certain lands and in what way do they hold those lands?—that is the question; because, my Lords, the point that is here stated arises entirely upon that charter of King James; and so I stated in the outset, that my learned friend's case, if it was that they were not trustees for the Companies, arose entirely upon that grant under King James, just as well as upon the subsequent parts of the case; and my learned friends might just as fairly say that the lands they derived from King James the First they were not bound to hand over to the City—that they ought not to have done it, and that they ought to have kept those lands in their own possession, precisely as they had kept the profits of the fisheries and other things: it must go to that extent, or it falls to the ground; they are trustees for the Companies as to the undivided lands, or if they be not trustees for the Companies as to those lands, then they were not for the lands that they divided among them. My learned friend has met it fairly; he says that they ought not to have divided those lands—it was a breach of duty—that those lands were given to them for public purposes; and if they pass away any of those lands, to the extent that they pass them away, they are less able to carry those purposes into effect: it was a breach of trust, and they ought not to do it. That is his statement; he puts it upon a bold proposition, and he must stand or fall by it. Is it so? Will your lordships say that this Society was guilty of a breach of trust in passing those lands to the twelve Companies? I ask you whether they were not bound to do it, and whether the object of the King was not that they should so grant them; and whether the whole of these agreements do not show that they were constituted by the Companies to receive the grant from the Crown as a trust for those advancing the money? We have contemporary documents: there is the letter to the Lord Deputy of

Ireland from the King, in which he complains that the time that was allotted—(your Lordships will find it in page 40 of the printed book)—there is a letter to the Lord Deputy of Ireland, in which the King complains that a certain part of the buildings was to be completed by 1611—that a certain time had been granted to the undertakers, and that they had not complied with it. The King grants them to the following year, which expired in 1616. What occurs then? Are these Companies to take these lands, or are they not? Is the Society to hold them? Is it contended that this whole county is to be held in the King's hands by means of this Society, and the distribution is to be entrusted to them; or is it intended that the King was to grant these lands to the Companies to hold them for their own benefit? The lands were granted to the Irish Society to be conveyed to the Companies, and they are bound to convey them to them as soon as they have complied with the conditions.

Then what comes next? You have the license then to hold in mortmain; and my learned friend has commented a good deal upon the language of this document. I should mention to your lordships that the King's letter had fixed a particular time; I will call your attention to the very words: "Yet we are pleased in grace, and that they may be the more inexcusable if they be deficient in their duties hereafter, to assign them a further time, which shall be to the last day of August come twelvemonths, which will be in the year of our Lord 1616, which we are determined shall be final and peremptory unto them, and at which time we are resolved to seize into our hands the lands of any man whatsoever, without respect of persons, whether he be a British undertaker, servitor, or native, that shall be found defective in performing any of the articles of the plantation to which he was enjoined." This is a general letter, applying to the plantation in the six northern counties of Ireland—that time is given; and then your lordships will find this license to hold in mortmain. What is the meaning of this? My learned friend, Mr. Knight, says that the Irish Society ought not to have given these lands to the Companies—that they ought to have kept

them in their hands, as it was intended that they should; and that in the charter of King James, in the grant to the Irish Society, nothing is said of their being trustees for the Companies,—that is one of the arguments my learned friend entered upon,—and that a rent is reserved to them, and covenants are entered into with them. Then, says my learned friend, What right have the twelve Companies? I say, look at the agreement—look at the stipulations on the part of the Crown—look at the emanation of this Society, and their own request to the King; and then the King grants the land,—and can there be any doubt that they received it as trustees, and that they were bound to hand over the whole land so received?—They say it was the City that came to the resolution that it was better to leave part of the land, if it could not be well divided, in the hands of the Irish Society—that it came from them, and not from the King—the suggestion was theirs. My Lords, upon this I will just read to your lordships the language of this Report: it is—“That as it was generally desired that a division should be made of all the lands in Ireland by and amongst the several Companies undertaking the plantation, they had with great pains first viewed the lands.” Your lordships recollect, commissioners were sent over to have the lands surveyed; and this is the report—“That as it was generally desired that a division should be made of all the lands in Ireland by and amongst the several Companies undertaking the plantation, they had with great pains first viewed the land, and carefully inquired after the true value of every district; and with the assistance and advice of the gentlemen of the county, the City’s agents and surveyor proceeded to make an equal division of the lands into twelve parts, the manner of which they presented to the Court; but with respect to the city of Londonderry and the town of Coleraine, and the three thousand acres appointed for the same, with the territories, ferries, and fisheries belonging to the same, they were of opinion that a division could not be fully made of them, but the rents and profits of them might be divided amongst the several Companies.” Why, my Lords, is it not quite monstrous for my learned friends, in the face of

this document, to say that the parties were not bound to divide, and that they were to hold those lands undivided, and the rents of the fisheries in their hands for some public purpose? This is their own act; it is they that propose that it shall remain in their hands—and what then?—that the rents are to go to public purposes? No; that they are to be divided among the twelve Companies.

Now my learned friends have spoken of the surplus—that the agreement was that the surplus rents were to be divided; and my learned friend to-day has asked, What do you mean by the “surplus?” there can be no “surplus,” unless some part of it was distributed to other purposes; but the word “surplus” is the creation of my learned friend, there is nothing about the surplus in the document—it is “because a division cannot fully be made, but the rents and profits of them might be divided amongst the twelve Companies”—not the *surplus*, but the *whole*, that is the act of the City and the Companies; and out of that arose the arrangement, that part was to remain in the hands of the Society.

Here is then the license in mortmain, which my learned friends have commented upon; they say it makes for them. It appears to me, I must say, any thing but that. The King recites, that the undertakers had performed what they had undertaken to do, and that they may take their lands; and there is a license to the different Companies to hold the lands. Why to the twelve Companies? Why was the license granted to the twelve Companies? What had they to do with it? Why, the license was granted to them for this reason, that though the treaty had been with the Common Council of London, representing the whole City of London, yet the money was advanced by the Companies, and therefore the proposition made, and which I have read to your lordships, was that the lands were to be divided among the twelve Companies; and they go to Ireland, and map it out for the twelve Companies, and then they report that this particular land should remain in their hands, and the rents be divided. Did the King sanction that? The King would not sanction any thing of the kind. The object of the King, they say, was, that all the lands should

remain in the hands of the Society; and Mr. Knight says, it is too late to question it, but, according to his view, the Society did very wrong to divide it. But the King seems to have taken no such view of it; he says, "Forasmuch as we are credibly informed that divers Companies, Corporations and Fraternities, of and within our City of London, within the realm of England, in testimony of their true obedience towards us, and towards the advancing of our earnest desire in the furthering of that worthy work of plantation begun by the Mayor and Commonalty, and Citizens of our said City of London, in the city of Londonderry and town of Coleraine, in our realm of Ireland, and other lands there, have disbursed, expended, and bestowed divers great sums of money for and towards the building, fortifying, planting, strengthening, bettering, and improving the aforesaid city of Derry and town of Coleraine," as they were bound to do under the articles of agreement; the King says he is informed that they have done that. "And the said Corporations, Companies, and Fraternities, being willing to proceed in the said work of plantation, do intend, so far forth as to them shall seem convenient, to be at further charge for the planting, bettering, and improving of other lands, tenements, in and by certain of our letters patent hereinafter mentioned, granted, or intended to be granted to the Society, Governors, and Assistants, London, of the new plantation in Ulster, in the realm of Ireland; and for their better, more orderly, and speedier proceeding therein, are desirous to have such part of the said lands as they severally and respectively intend to build on and plant, to be to them severally conveyed by the aforesaid Society, which, by reason that the said Companies, Corporations, and Fraternities are not enabled to take and hold the lands and tenements in mortmain without our special license, could not be performed to the said Society; and yet such have been the desires of our said subjects, the said Corporations and Fraternities, (as we are informed,) to further and promote our zeal towards the same work"—you observe that throughout the King says that his desire was to get Ireland settled and planted by the parties from England—"that notwithstanding they have not yet any conveyance or assurance

of the lands from the said Society, they have already, with great alacrity and readiness, began to build on a great part of the said lands, and have likewise disbursed divers great sums of money for and towards the same." Now what is this recital? The recital is, that the fortifications of Coleraine and Londonderry had been done, and that they were now ready and willing to build and plant the lands conveyed to them, and that they had began to build, although they had not been conveyed to them; and then comes the King's license to the Skinners' Company, and all the other Companies; and here is the part that my learned friend relies upon. It says, "that they are to take and enjoy such and so much of the counties, countries, baronies, cities, towns, castles, manors, lands, tenements, advowsons, rivers, fishings, rents, tithes, services, possessions, and hereditaments, given, or granted, or mentioned, meant, or intended, in or by our letters patent, bearing date at Westminster the 29th day of March, in the 11th year of our reign of England, France, and Ireland, and of Scotland the six and fortieth, to be given or granted to the said Society of the Governor and Assistants, London, of the new plantation in Ulster, in the kingdom of Ireland, of the gift, grant, feoffment, bargain, sale, assignment, and alienation of the said Society of the Governors and Assistants, London, of the new plantation in Ulster, in the kingdom of Ireland, and their successors; or of the gift, grant, feoffment, bargain, sale, confirmation, surrender, or release of any other person or persons whatsoever, bodies politic, and others hereafter to be made, as the said Society of the Governor and Assistants, London, of the new plantation in Ulster, in the kingdom of Ireland, and their successors, or any other person or persons whatsoever, bodies politic, and others, shall be willing from time to time to give, grant, enfeoff, bargain, sell, convey, assign, alien, confirm, or release, to the said Wardens and Commonalty." What is the construction to be put upon that document? My learned friend says it shows there was a discretion vested in the Irish Society. On the contrary, I submit to your lordships that it is clear from that document that all that the King required, before he granted this license to hold in mortmain, was, that a report satisfactory

should be made to him, that what had been undertaken as to the public works of Coleraine and Derry had been done; and then, when he was satisfied that the parties were willing to build upon their allotment, then comes this license to take. Then where is the public trust? Is it meant that the lands they took were clothed with any trust? My learned friend's argument is, that they were. He says that the Society were not justified in granting it at all: these lands were intended by the King to be clothed with some trust. Then they are clothed in the hands of the Corporation. But has any one heard for a moment of any information filed by the Attorney-General, on the part of the Crown, alleging that they were held upon any public trust? They were held upon the trust stated in the instrument in which they are conveyed, that they should pay the fee-farm rent to the Crown, and conform to the covenants contained in the grant.

So much, my Lords, for the part allotted and divided. Now for the rest. I have read the proposition for their remaining in the hands of these parties, coming from the citizens of London themselves, and they so remained. Suppose these Commissioners who had gone over to Ireland, when they mapped out the lands assigned to the Companies, instead of forming the conclusion that they formed, that it was better to leave the town lands of Derry and the ferries and fisheries of the river in the hands of the Irish Society, and the profits to be divided among the Companies—suppose they had come to a different conclusion, can any body doubt that they would have been conveyed in the same form? It is no suggestion of the Crown; it is the suggestion of their own Commissioners, that it would be better to leave these lands in the hands of the Society. A division takes place; and it has been stated to your lordships, that the property was lotted out, the lots were drawn, and the twelve Companies receive—what? They receive their allotments in proportion to the different sums paid by the Company; each party has the sum carried out against the name, and each Company received an allotment. I read from the evidence the document itself, stating the profit was to be divided. It is stated in this book, in page 39—“The houses in London-

derry and Coleraine, the lands attached thereto, and the woods, ferries, and fisheries, not being susceptible of division, were retained by the Society, who received the rents and profits, and accounted for them to the twelve chief Companies ;"—not any surplus, but they received the rents and profits, and accounted for them to the Companies. This is what took place upon those divisions.

My learned friend, Mr. Knight, in his address to your lordships, read several documents at considerable length ; and, among others, he read the precepts issued by the Lord Mayor of London to the different Companies : but this precept my learned friend did not read, which is one of importance touching the present matter, as to the division of these lands—it is in 1610 ; it is a precept from the Lord Mayor, and begins in this form—"Whereas the King's most excellent Majesty hath granted unto the City of London,"—this is previous to the conveyance to the Companies,—“the cittie of Derrie and towne of Coleraine, with seven thousand acres of common land thereunto adjoyning, and fishing, and divers other communities, privileges, and franchises, payinge fower markes per annum ; and whereas the City hath undertaken to dispend, in building of houses and fortifications, and for freeinge of foreign titles, the sum of 20,000*l*.”—that was the sum stipulated for the fortifications of the town, and so on. “And whereas also his Majesty hath further granted to this cittie divers other lands in the county of Coleraine, and other undertaken lands to build thereupon, which building is to be performed in such manner as is expressed in the printed booke now extant ; yet with this addition, that they are to have and enjoy the same lands after the Irishe measure, being far better than other ordinarie undertakings have.” Your lordships will see that the whole of this proceeds upon their being upon the same footing as the other parties, except in regard to the measure there stated. “And forasmuch as the Governor and Committees for the plantation in Ireland are now instantlie to take care for the letting and disposing of the said lands in the said countie of Coleraine, and the said other lands so undertaken, to be used and managed for the benefit of this cittie, which would other-



wise prove a great hindrance and losse, especially for that the time of the yeare is now most convenient for the plantation to proceed; yet it is thought fit that the offer of those lands be first made to the several Companies of this City, who have and are to disburse the same, and bear the charges of building before mentioned. These are therefore to charge and command you, that yourselves, together with the Assistants and such other of your Companie as you shall think fitting, do forthwith assemble together, and advise whether you will accept of a proportion of the same lands according to the quantity of your disbursements, to be by you undertaken and managed according to the printed book for plantation, or that you will refer the lettings and disposing thereof to the Governor and Committees, and that you certify to said Governor and Committees in writing under your hands, at the Guildhall, on or before the 7th day of February next coming, what shall be your full determination therein, to the end the business may the sooner be effected; wherein you are to take advertisement that your Company are to pay and bear their proportion of the charge of the said building, fortifications, and freeing of the titles, whether they accept of the said offer of the lands or no; and also that, notwithstanding the acceptance of the lands, you shall likewise still be partakers of all benefits of fishing, with the profits of the townes and other communities whatsoever."

Now here is a statement, therefore, made by the Lord Mayor of London to the different Companies, that they were to receive an allotment of the land in proportion to the sum advanced: that they agreed to, and that is communicated to the Crown; the Commissioners are sent out, and the King licensed them to take, and, at the suggestion of the Companies themselves, they held those undivided lands. It seems that the simple statement of the proposition is enough to dispose of the claim set up by the Irish Society, that they were constituted for some other purpose than as trustees to have this land conveyed to them.

But, my Lords, they say that the Irish Society are not the trustees of the Companies. I will take my learned friend's

statement upon that point, and the argument he puts forward. What reason does he give for saying they are not?—my learned friend read the whole of their Answer from beginning to end;—what reason do they give for saying they are not the trustees of the Companies? I apprehend undoubtedly, upon this motion, that the statement of the defendants in their Answer is a statement to be laid before your lordships, but the statement of these defendants can have no force or effect in this cause whatever, unless it is borne out—I mean statements of these matters in the time of King James the First—unless it is borne out by some document or evidence. Where is that document? Where is the evidence? What is the inference relied upon, when they say that the Irish Society were trustees appointed by the Crown for public purposes, and that they were not the trustees for the Companies? Where is the document, or the evidence of it? After my learned friends, seven of them, have gone over the whole of this case, I ask your lordships now where is the evidence, where is the document, upon which they build or rest themselves, in answer to the evidence I have laid before the Court? I have found none. They admit they have recent documents; and those they have put in, and to those I will apply myself presently. Mr. Knight reasons thus, and is followed by Mr. Jacob. “This Society, after the license to the Companies to hold in mortmain, proceeded to make conveyances to the different Companies;” and my learned friend takes one of those conveyances, and he has found that in those conveyances there is a reservation of the fee-farm rent to the Irish Society—he finds that there is a reservation of the timber and building materials, and also a reservation for them to enter, to hunt, hawk, fish, &c. “Now,” says my learned friend, “how can you contend that the Irish Society received those lands for the purpose of being handed over to the twelve Companies, when you find that they have reserved to themselves a quit rent upon each of the lands so granted?” It is not correct as to each, but they have in a great many—in five they have. My learned friend argued, “When are these quit rents to be divided? Are the Companies to pay to the trustees, and the trustees to divide them out

again? and is not that wholly inconsistent with the notion of their being trustees?" That is their way of putting it. I think that admits of an easy solution. If your lordships will turn to the charter of Charles the Second, which is a copy in this respect of the charter of James, you will find, in pages 64 and 65 in the Appendix, that the Crown had granted the whole county of Londonderry as well as that granted in severalty to the Society, and they continue to hold it, and the Crown has reserved rents to itself from the Irish Society—there is a certain sum for lands, in a certain part of the county so much, and another so much, reserved. What is the consequence of that? When the Society carries into effect, what I apprehend you will have no difficulty upon these documents in saying was the object and intention of all persons who advanced the money, these quit rents of course are to be borne, not by the Society, but by the person to whom they convey. Then the grant of the Crown contains the whole of the land they divide, reserving certain lands; the Society divided off the lands: and there is a solution of it. Then the next difficulty is as to the timber; they say, "What is the timber to be reserved for, or the building materials?" You will find, with respect to the timber and building materials, in the same Report that was made to the Companies by the parties who went over to survey the land, and to have the division made—in that same Report they recommend that part of the hereditaments granted shall remain in the hands of the Irish Society, and they are to account for it. You will find this—"We advise that, upon the division among the different Companies, it be provided, that where a proportion of lands shall want timber to build with, the Company, to whose share it shall fall unto, may have sufficient timber out of the woods next adjoining and fittest for that use, to be assigned to them by the City agent." That is the Report; and again, in the same document, you will find also that it is provided, that as some of the proportions of land have great store of wood, and other materials for building, and other proportions have not sufficient, that those who have not sufficient should have liberty to take and fetch sufficient timber or materials to build with from lands that have timber

to spare, without paying any thing for the same. Now your lordships will find, therefore, in the Report, that it is twice stated that the timber upon the lands granted by the Crown was to be in point of fact for the general use of the persons that were planting; that no one person should have the exclusive ownership of the timber, but any other person in want of timber for building would have a right to go upon the adjoining lands to take timber. That is recommended in the Report, and there is the same thing in the Report respecting building materials—that if you have upon the lands any stones, or building materials, or timber, inasmuch as there is more upon some allotments than upon others, the building materials and timber are to be for the general purposes of the plantation in that part of Ireland. How is that carried into effect? Why, the Society, according to this Report, are to retain in their hands the undivided lands, and the fisheries about Coleraine, dividing the profits; and they always reserved for the Society the timber and building materials, so that the timber and building materials remain in the hands of the Companies in virtue of their allotments.

What was the consequence of this? The consequence of this arrangement was this—that the persons, the trustees so appointed, would be bound, if there was a want of building materials upon one plot of land,—and they had the power under these reservations,—to take the timber and the wood from another portion: I allude to the buildings on another part of the plantation. But does my learned friend contend that this reservation was for the private benefit of the Society, or that it was reserved to them for any public purpose? Why have they reserved the timber for a public purpose, and granted the land? The whole object is plain from looking at the agreement.—We want to plant this part of Ireland, and here is a grant to the Companies: some of the Companies may find they have no wood; but as wood and building materials are to be found upon other lands, the only way to effect it is, to let the trustees retain the whole as to the timber and the building materials, and hold them in common, I may say. No one person has an exclusive right to that on his

allotment; each one may take from another man's allotment, and that has been done by giving these trustees an interest in those building materials, and parcelling it out. This was the strong ground upon which my learned friend rested, to show the public purpose,—where is there a trace of it? I can trace it to the Report of the Companies themselves—I can trace it to their own recommendation—I can trace the reservation of the undivided lands, and the wood and building materials, to the same Report—I trace it to the Common Council. I hear my learned friend say, “The Common Council!”—Perhaps he was not attending to me when I said I should use the Common Council and the Companies as synonymous.

Mr. JACOB.—I was struck with the singularity of using them as synonymous.

Sir WILLIAM FOLLETT.—I said more than once, I used them synonymously; because I intended to take the other part of the argument at a more distant period, if my learned friend had done me the kindness to attend to me.

Mr. KNIGHT.—Never was a reply so attentively listened to.

Sir WILLIAM FOLLETT.—In my view, the Common Council of London were acting on behalf of those Companies: they were formed from them, and acting for them—and for that reason, in this stage of the proceedings, I use the words synonymously. I am not going to forget that part of the argument of my learned friend, that the City have some distinct interest. I am not going to forget the statement of Sir Charles Wetherell, that the City are Visitors. But, first, I say, have the Society any public purpose, and have the City of London any right to visit them? I say, I can trace the reservation of the building materials and the wood upon the divided property granted by the Crown to the City themselves—I can trace it to the Common Council, and to a party totally distinct from the Crown, or any other public purpose.

Now upon what other document does my learned friend rely? I should state that my learned friends have complained, that only part of the case was opened. I am not aware of any single document that my learned friend has read or called your lordships' attention to, that was not stated in the opening. It

is true that I did not read so much of the Answer of my learned friends as they have read themselves, though perhaps, according to the practice of this Court, I ought to have done it. I do not know how that may be ; but I am quite sure of this, that no Court can decide a question of this sort upon the statements in the answer of the defendants, unless the answer be in some way or other borne out by the documents or facts to which it alludes. If they say they are trustees for a public purpose, are we bound by that?—and when they refer to documents constituting them such trustees, have I not a right to refer to them to show they are not? It is the claim they are setting up that makes this application imperative. They say it is not by your consent we are doing what we are ; we have a right to do it without ; we have a discretion to do what we please ; and it is that that makes it imperative. It is on account of the statement that they have the right to do it, without the consent of the Companies, or against their consent, that we are bound to take these proceedings.

The only other document I am aware of upon that subject is the charter of King Charles the Second. The charter of Charles the Second is not precisely in terms like the charter of King James ; but it is in substance, as relates to most of the matters contained in it : and here again, I say, occurs a little mistake on the part of my learned friend, who said that in the opening your lordships' attention was not drawn to the fact, that the Irish Society were clothed with the power of approving of the by-laws made by the Corporation of Londonderry. I think your attention was distinctly called to it ; but they have no power of any sort or kind, that I can discover, from this charter of King James, or any other, to expend the monies of the Companies of London.

Now, before we look at the language of this charter, I will beg your lordships' attention, for a moment, to the circumstances under which it was granted. The Companies of London had been in possession, ever since the reign of James the First, of the lands granted to them by the Irish Society, and they had received, from the year 1614, dividends upon the rents of that part of the property that was retained in the hands of the Irish

Society; but, in the reign of King Charles the First, proceedings had been taken, the charter recalled, and the lands taken back into the hands of the Crown. In the time of the Commonwealth they had been regranted;—that was considered a nullity; and this grant of Charles the Second was nothing more than a re-grant of the land, and a re-enactment of what had taken place in the time of James the First. The part which one of my learned friends relied upon was this: “That in the same Court or Meeting the Company shall and may have full power and authority to direct, appoint, and ordain, for and on the part of the Mayor and Commonalty, and Citizens of our City of London,”—I pass that again for the moment,—“all and singular things which, for, or concerning the plantation, supply, establishment, continuation, and government of the said city of Londonderry, and all other the lands and tenements, hereunder in these presents mentioned to be granted, shall seem to be most profitable and expedient; and also to send orders and directions from this kingdom of England into the said kingdom of Ireland, by letters or otherwise, for the ordering, directing, and disposing of all and all manner of matters and things whatsoever of or concerning the same plantation, or the disposition or government thereof; and also for the receipt, ordering, disposing, and laying out of all sums of money now collected and received, or hereafter to be collected and received; and generally any other cause, matter, or thing whatsoever, concerning the direction or ordering of the said plantation, or concerning any other things whatsoever, which by the true intent of these our letters patent can or ought to be done by them, for the better government and rule of the said city of Londonderry and county of Londonderry.” Now, that the power was granted to the Irish Society to approve to a certain extent of the by-laws of the Corporation of Londonderry, was stated to your lordships in the outset; and the question, I apprehend, is this—whether, when the Irish Society were formed at the request of the City of London, (in order to avoid any interruption, I use that expression) and to watch over the interests of the undertakers, when they had been formed for that purpose, and a charter granted to them, the King having also granted

to them certain powers of control over the Corporation of Londonderry, the town of Londonderry being, in point of fact, built by the Companies of London under the agreement; is there any thing to be inferred from that, that the Corporation of London were to hold any property for public purposes? They had full power to act, and, according to one of these sentences, to send directions concerning the management of the plantation from England. They were clothed with the power of managing the plantation to a certain extent—they had the building materials reserved to them, and the timber reserved to them, and the fisheries—they were the legal owners to a certain extent, and they had the management for the benefit of the Companies; but what is there to show to the world that the directions they were to send from England were to be something foreign from the purpose of the grant? I can find nothing in this charter, or the charter of King James, to authorise any thing of the kind; on the contrary, it is suggested by the City, that they had this machinery constituted to watch over the interests of those who should undertake the plantation; and, as the plantation and the buildings were to be a work of time, that it would be better done by having this Society existing, and holding a part in their own hands, and accounting for the profits; but there is nothing in this charter to show that the lands or property they held were held for any purposes except for the benefit of the undertakers.

My Lords, there is another clause that my learned friend has alluded to; it is in the preamble to the charter, page 14, in which it is stated, that “ the Governor and Assistants of London, of the new plantation in Ulster, within the realm of Ireland, by virtue of a certain license from our said illustrious grandfather, under the great seal of England, bearing date at Westminster the 30th day of September, in the 13th year of his reign over England, France, and Ireland, and over Scotland the nine and fortieth, did grant unto the twelve chief Companies of our City of London (which had taken upon themselves the greater part of the burthen of the said plantation) divers great quantities, parcels, and proportions of the said lands, tenements, and hereditaments, according to their



several disbursements ;” here at least is a recognition on the part of the Crown of what is intended :—“ and did retain in their own hands such part of the tenements and hereditaments as were not properly divisible, for defraying of the charge of the general operation of the said plantation.” Upon this recital in the charter my learned friend builds this theory ; that a part of the lands not divisible was retained to defray the charge of the plantation, and that they were therefore to retain it in their hands for public purposes connected with the settlement of the north of Ireland. I understand them to say now, they do not mean to say that it was for the county of Londonderry, but that it was retained to defray the charges of the plantation. I understand the meaning of it to be this—that the property was left in their hands at the suggestion of the City of London, and at the suggestion of those who went over to survey them, but that they retained in their hands the timber and building materials, to be applied to general purposes. Here is a statement that the land not properly divisible was retained to defray the general charges, and it is to be connected with what took place before. Does it mean that the property held in their hands was to be applied for the benefit of the persons, the owners of the land granted, or that they were to hold it for some public purpose ? It is clear, if the King is supposed to mean any thing, that it was held for the benefit of the undertakers—that they were to hold them for the general benefit of all. The parts allotted each would take, and the part retained was held for the general benefit of all. But what is meant by the general benefit ? Is it meant the parties undertaking the plantation, or parties unconnected with the plantation ? Does it mean that they had a right to apply it to the interest of parties foreign to those who had the land ? I apprehend not—it is the recital of a fact that then took place : we know how it took place, and under whose advice and suggestion. Here the Irish Society have granted out allotments to persons who undertake, and have reserved property not properly divisible, and the timber, as they told them, to defray the charge of the general operations of the plantation. I should take this preamble, which

is another thing my learned friend charges us with not reading—I should take this as a very strong argument, if you required any, against my learned friends; because you must not forget that my learned friend, Mr. Knight, says at once, he must stand upon the whole of the ground he has put forward, which is the statement of the King. Here is a Society for the plantation of Ulster in the realm of Ireland; and after stating the grant of the lands to the Irish Society, and incorporating it, the charter says, “And whereas the Society, by virtue of a certain license from our said illustrious grandfather under the great seal of England, bearing date at Westminster the 30th day of September in the thirteenth year of his reign over England, France, and Ireland, and over Scotland the nine and fortieth, did grant unto the twelve chief Companies of our City of London (which had taken upon themselves the greater part of the burthen of the said plantation) divers great quantities, parcels, and proportions of the said lands, tenements, and hereditaments, according to the several disbursements.” And then, you find, he goes on to state—“And did retain in their own hands such part of the tenements and hereditaments as were not properly divisible, for defraying of the charge of the general operation of the said plantation.” This charter is, in point of fact, a restoration and granting again to the Irish Society, and not to the twelve Companies—and that I take to be a very strong argument; the King has recited it was done, and the only object is to restore things to the state in which they stood before: the grant is made again to the Irish Society. Will any one contend, after that charter, that the Irish Society were not bound to do what they did? Will any body doubt that the object of the King was such, and that it was clear and apparent upon the face of the charter that it was so? It recites the intention to grant according to their disbursements; it recites the forfeiture, and the purpose of King Charles the First to carry into effect the grant—not to the twelve Companies, but to the Irish Society. Can any man doubt that the Irish Society would be compellable to grant those lands as they had done before? And so it was understood at the

time. The Irish Society did immediately grant the lands to the Companies in the same way that they held them before, and they hold them now; they held the undivided property themselves; and the question is, do they hold it under the control of the Companies, or at their own discretion?

My Lords, I am not aware whether there is the language of any other document my learned friends proceed upon to show there was some public trust attached to this Society. I am not aware that there are any—I think there are not—I think those are the only documents. Now it does appear to me, when you come to analyse them, notwithstanding the mode in which this case has been attempted to be obscured,—I do not say designedly so,—but hearing seven of my learned friends—one reading part of the Answer, another a part of a document, and taking different views of the case—the effect necessarily must be to mystify the case; but, if analysed, it is a clear case, and there is no obscurity about it. I have stated the documents; and my learned friends who are with me agree with me in opinion that my learned friends have not put their finger upon any single document to make out the startling proposition of Mr. Knight, that the whole of this was granted for public purposes, and that the Irish Society had no right to grant them, and if it was not too late they ought to recover them back again, and that they ought to have an unlimited control over the property. I can find nothing of the kind in the documents: the Crown never thought of it, and the City never thought of it, nor the Companies. The dealing between the Crown and the Corporation was a simple one:—here is land granted to you; settle it with your tenants who profess the Protestant religion; you may alienate it according to the terms, paying a fee-farm rent—and here is the grant. This is the bargain on the one hand, that the King agrees to grant, and the City agrees to accept,—that was the bargain between them, and they take it; and now the Society turn round and say, “We are trustees for the King; we are trustees for some public purpose, and not for you; the whole was a grant of land for the purpose of being held for ever for charitable or public purposes: that is the intention, and that is the way we claim it.”

But, my Lords, it does not rest there. I must call your attention to other parts of the case, to which my learned friends have made no answer whatever. I am, my Lords, not now going to call your attention to any thing said by the City of London,—their admissions are clear, and broad, and distinct enough; there is no doubt, after the statement of the City, of the relation they bore to the parties; there is no doubt, after the statement of the City, of the relation in which they stood to one another, or the relation of the Irish Society to them. But, at present, we are upon the Irish Society, and you will not forget the documents relied upon in the opening of this case, to show that the Irish Society had constantly recognised the fact, that they were trustees for the twelve Companies—that they had held themselves out, and stated themselves to be so, over and over again. I am not speaking of the accounting for the dividends (I should wish to keep that distinct); but upon matters unconnected with the accounting and dividing, they have held themselves out as trustees for the Companies.

Before I come to that, I had almost forgotten a document my learned friend had relied upon—I did not intentionally pass it by—that was the deed relating to the timber. I am afraid I can hardly put my hand upon it at this moment—it was a deed executed in 1741, called a Deed of Disclaimer; it is the deed by which the Society released to the holders of the different lands originally allotted the timber upon their estates. Your lordships will remember it was originally reserved to them for the purposes I have mentioned, as I submit; but in 1741 there was this deed—"The Society of the Governor and Assistants, London, of the new plantation of Ulster, within the realm of Ireland, being sensible, not only of the great decay, but almost total consumption, of the timber and woods formerly standing and growing on the several proportions of land belonging to the respective twelve chief Companies in London, &c. in Ireland, and that there hath been a very great and almost general neglect and disregard, for many years past, to the planting of young trees, either by the said Companies or their tenants, or other persons claiming from or under them, for the raising and providing a further supply and stock of timber for

the uses and occasions of the plantation,"—your lordships observe that they put it for the uses of the plantation,—“and having cause to believe that the chief hinderance and discouragement to the planting of young trees hath arisen and been occasioned by the said Companies, or their tenants, or other persons having or claiming a right to the said lands, being apprehensive that such young trees, if planted, when they should grow and become timber might be claimed by the said Society, and disposed of by them in such manner as they should think fit, to the prejudice of those by whose care and labour such trees shall have been planted and preserved. In order therefore to the removing such distrust and apprehension”—then they release to the several Companies, “that all young trees or saplings, which have been planted within the space of fifteen years, and are now growing, or that shall hereafter be planted and grow on any of the said lands, or proportions of the said respective Companies, as aforesaid, shall not at any time or times hereafter be claimed by the said Society or their successors, either when the same shall be, or become, timber, or otherwise; nor shall be disposed of by them to or for the benefit of any of the estates or proportions of any other of the said Companies, their tenants, or other persons, deriving or claiming any estate or interest under them, nor be taken or assigned by the said Society to or for any other use or uses whatsoever; but the same shall and may, from time to time, and at all times hereafter, be cut down and taken by the Companies.” Now your lordships will observe, that this deed, instead of helping my learned friends, tends to corroborate the view I suggested to your lordships before, that the timber was reserved, that all the owners of the land might have the use of it indiscriminately, that if they wanted timber or building materials, they might have it from other lands than their own, under the direction of the Society; and this Deed of Disclaimer is, that they will not take the timber from one to use upon the allotment of any other person—it shows that the object was originally to reserve it for that purpose.

Now what argument does my learned friend build upon that release of the timber? The timber was reserved;—to

what purpose have they applied the timber ? The timber “ shall not be disposed of by them to or for the benefit of any of the estates or proportions of any other of the said Companies, their tenants, or other persons deriving or claiming any estate or interest under them, nor be taken or assigned by the said Society to or for any other use or uses whatsoever.” I apprehend that that shows that the Society had been in the habit of allowing persons upon some of the proportions and estates to take the timber from other proportions and allotments, and that was what I ventured to suggest to your lordships was the cause of the original reservation.

But, my Lords, I was going to call your attention to some parts of the case that had escaped the attention of my learned friend. The first was, that the Irish Society had been composed, in a great measure, of the members of the twelve Companies. That is an argument that has been repeated over and over again ; I should think it has been repeated enough to weary your lordships. I have, when I have been in Court, heard it from all my learned friends several times ;—what is the meaning of it ? Is it because the Irish Society is composed of members of the Companies, that they are less the trustees of the Companies ? Is it that they are less amenable because they are selected from the Companies, or that their acts are less the acts of the Corporation ? I do not know why you are to look at their acts differently, because in 1831 they choose to become a Society. When Mr. Knight says that this Society does not consist of the same members ; that they change every year, and elect every year, and those elected now from the twelve Companies are not the same,—is that an answer to the application ? What remedy have we against the individual members of the Corporation ?—they are responsible in their corporate capacity. It is against them, in that character, we apply to have redress against them ; their changing their character is no answer to this application at all. But the way it is intended to be used is this,—that you are not to take the admissions of the Irish Society with the same force as you would if they had not been selected from the Companies. I cannot see that there is any weight in that ; they agree that

it was an emanation from the twelve Companies, and that they intended it for the benefit of the twelve Companies; they admit that. They no doubt would be constituted in early times, and it appears down to very late times, of the members of the Companies; but still when, because they became the Irish Society, they are now seeking to set up that they were trustees for public purposes alone, surely we have a right to look at the acts of the Society, to see whether in those acts or declarations, or any thing they did, they assumed any other character than that of trustees of the twelve Companies. If they did, it might afford an argument on the other side; but if we find that they never did, and that their statements always were, that they were trustees for the Companies, I apprehend it is a very strong argument against the proposition set up to-day, that they were trustees, not for the Companies, but for the King or a public purpose.

Your lordships will remember, among the documents I referred to, the case stated by the Irish Society in 1715, which begins—"The lands granted to them by said letters patent and charter of his said late Majesty King James the First, belonged to all the Companies of London, who contributed originally to the purchase of them; and that the said Society, being only trustees, not long after the said first letters patent, caused the same to be conveyed, and an allotment or division of them to be made into twelve equal parts (except the city of Londonderry, the town of Coleraine, the fishings and the woods), one of which was conveyed by the Society to each of the twelve chief Companies in fee, and that, after passing the last letters patent of King Charles the Second, the said several grants and conveyances were renewed by the Society to said Companies, to whom also the Society from time to time paid and divided the clear rents and profits arising out of said city of Londonderry and town of Coleraine, and the fishings aforesaid:"—not the surplus, after they had disposed of any part according to their discretion; but in 1715 is a statement that they were trustees for the Companies, to divide the lands, and that the rents and profits of the undivided lands they divided among the twelve Companies.

Now again, my Lords, there is the Answer of the Society to a bill filed against them by the Bishop of Derry, that was about the same date. You will remember, at the time there was the opinion of the Common Serjeant of the City of London taken, which I mentioned in the opening, the opinion of Irish counsel was also taken upon the fact: the Common Serjeant states that they are trustees for the twelve Companies, and in his opinion they ought to be. This was in 1715; here is the statement by the Society, here is the opinion of the Common Serjeant of London, and the opinion of the lawyers in Ireland, that they were always trustees for the twelve Companies, that they allotted part, and retained the rest of the land. Here is the Answer of the Irish Society to the bill filed by the Bishop of Derry—"They disown any encroachment:" this was in 1683. It seems to be monstrous, if I may be allowed to say so, that my learned friends should so treat this Answer, this solemn proceeding, and this statement of cases and opinions, by saying that the Irish Society consisted of members of the twelve Companies of London;—that is the only answer that my learned friends have attempted to give to it. "They disown any encroachment upon any of the fishings belonging to the complainant, or the setting up any titles, as suggested by the bill, whereby to oust him of his interest, right, or possession, or any combination to injure or prejudice either his predecessor or himself in any of their rights; they, these defendants, being in no way particularly concerned in interest, but as trustees for the several Companies within the City of London." Trustees of what? Trustees of the fisheries, the subject-matter of this suit! They had no interest but as trustees; and when did it first strike them that they were trustees for any body else? Was it after the reform my learned friend Mr. Knight has spoken of, when they elected members of the Common Council not members of the twelve Companies? Was it after that it first struck them, after the lapse of two centuries, that they were not trustees for the twelve Companies, but for some public purpose? Was it since 1831 that they discovered it? I believe there will be found no trace before that time of any such claim.



There is another curious document I mentioned to your Lordships in the opening: there was a memorial sent by the Irish Society in 1713,—(there are several entries in their books of memorials sent to the different Companies of London;—it is set out in their Answer—I will refer to the page of it immediately,)—in which they state precisely the same thing; it is a memorial touching the packing of the salmon, and the quantity of timber requisite for the casks; it was a memorial to each of the Companies, stating that they were trustees for them, and pointing out certain things that they think requisite to be done. Then, again, there were several entries in their books of applications made to them to expend money; and amongst others, one to Mr. Walker, the governor of the city of Londonderry. What did they do? They did not do it; they made an application to the City of London to do it, and, with the consent of the Companies of London, the advance was made; they did not advance it: this I read from their books; it is verified by the affidavit of Mr. Kensit. This is the memorial of “The Society of the Governor and Assistants of London of the new plantation in Ulster, within the realm of Ireland,” &c. [*reading the memorial.*] Before, when I addressed your lordships upon the reservation of the timber, I stated that the timber was reserved not for a public purpose, but for the benefit generally of the parties to whom it was reserved; and here they state, “which has been constantly,” &c. [*reading a further part of the memorial, down to the words for 1600l. a-year.*] Then they go on to say this—“but a great quantity of young trees and saplings have been cut down,” &c. [*reading a further part of the memorial, down to the word expedient.*] That is in 1713.

Now what does this document prove? Unless, as my learned friend suggests, we are to suppose that the twelve Companies are making evidence for themselves, and this memorial was written by the Irish Society as evidence for themselves, what does it show? It shows that the Irish Society, in 1713, represented to the Companies of London, “the timber upon your estate which had been reserved out of the grant, has been applied to the purposes of building, and the reparations of

buildings, and also for the casks for packing up the fish, which was also reserved; and that the Companies are interested in keeping up the supply of timber for the buildings as well as for the fisheries, and requesting them to assist them." Is there a trace of any public purpose in it? Is there a trace, for a moment, that any part of the profits of the fishery was to be applied except for the benefit of the Companies, or that the timber was to be applied except for the benefit of the Companies, or for the reparation of the estates? Then where are we to look for it? We cannot conjure up public trusts, or take this party as clothed with a trust for the public or the Crown, without something to rest upon: where is it? All the documents have been produced and commented upon. Here, in 1713, is a document that explains the ground upon which my learned friend stood—the reservation of the timber to the Society, in which they state they have no interest except as trustees to the Companies.

Now, my Lords, again, what occurred in recent times? The Common Council of London thought fit to set up a claim, not precisely the same claim that they have set up to-day, but one equally well founded. In 1817 they set up a claim, that they had a right to call upon the Irish Society to account to them for the receipts and profits in their hands—that was as late as the year 1817; and then the Common Council, in 1817, (this is in page 142 of the printed book,) thought fit to claim to have some right or another over the Irish Society—they claimed some right; it is not very clearly defined, but they claimed some right—they claimed to have the right to compel the Irish Society to send an account to them. I do not know whether they claim it to-day, but they say we have no right to come here to-day without first coming to them; therefore I suppose they mean to say they have some right: they attempted it in 1817, and opinions were taken—the opinion of Mr. Serjeant Joy, in Ireland, and the Recorder of London. The Society refused to comply with the requisitions of the Common Council, and Mr. Serjeant Joy says, "I am therefore of opinion, that unless the Common Council shall be considered to have a right to an account, this novel claim of their's ought to be resisted

*in limine* ;” and then he says, “The next question is—Have the Common Council a right to call the Society to an account? I cannot discover the slightest foundation for such a claim. The Society superintends the general concerns of the plantation, and is a trustee for the twelve Companies, who are absolute owners of their estates, which are not clothed with any trust either for individuals, for any other public body, or for a charity.” That was an opinion taken in 1817, and published by them in this book.—“There is clearly, I think, no trust for the Common Council, as a body; I cannot therefore conceive why they should demand an account of the disposal of revenues in which they have no interest. I am of opinion that they are not entitled to such an account, and that the Society ought not to give it.” That is the opinion of Mr. Serjeant Joy, the present Chief Baron in Ireland, and it was his opinion on the statement of the Irish Society itself. What does the Recorder of London say? He says, “I perfectly agree with Mr. Serjeant Joy in his opinion, that the Society ought not to comply with the requisition made by the Common Council, who, as a body, can have no interest. The Society superintends the general concern, and is a trustee for the twelve Companies, who are absolute owners of their estates—to them, and to them alone is the Society accountable. I do not understand that such an application has been made before, and therefore am most decidedly of opinion that the Society ought to refuse it.”

My Lords, your lordships will pardon me for referring to another document—I do it mainly for this purpose, that your lordships’ minds may be directed to the real question in the case, that is, the construction of the documents, and the construction of the evidence in the cause, and not to the observations of my learned friends, as to what they suppose to be their objects. I heard part of the eloquent speech of Mr. Wood yesterday, in which he stated that the spreading of the Protestant religion in Ireland was one of the objects—I agree that was one of the objects of the plantation, but I utterly deny that it was a part of the object of the grant of those lands, or that the parties who took the grants were to do any thing of the kind. The object of the King was to put Protestants there—

that was the object of the King, and the question was, whether the King did not adopt a very wise and proper method. I apprehend he did; and it has so happened that those counties were almost entirely, till of late years, occupied by Protestants—of late years it is not so;—the plan of the King to colonize Ireland took effect, but not in the way my learned friend has pointed out, but that the parties were to hold the lands for their own benefit. Here is another document, in 1681. There was another observation of my learned friend upon the charter, that the customs of Londonderry and Coleraine are granted to the Irish Society. There is no doubt that every thing was given to the Irish Society, but the question is, for what purpose, and for whom? and this is verified by Mr. Kensit, it was referred to before:—"The defendants say that they have heretofore agreed with his Majesty," &c. (*reading the passage.*)

Mr. JACOB.—We do not know where this comes from; it is a novelty to us.

Mr. LLOYD.—It comes out of your book.

Sir WILLIAM FOLLETT.—Was it read before? if not, I will not read it now.

Mr. LLOYD.—It is an answer to Mr. Knight.

Sir WILLIAM FOLLETT.—I suppose, by my learned friend's interrupting me, he means, if I have not read it before, it is not to be read now. I abstain, therefore, from doing it; but we do not want any document in respect of the customs of Londonderry, to show that they were held for the benefit of the Companies, because every document, every thing put in, shows that they held them for the benefit of the Companies, and no other purpose. Now where is the document that they will read that will show me that at any period of time—I do not care at what period—where is the document at any period of time to show your lordships, that the Irish Society ever acted except as trustees, that they ever can hold in any other character, or that it was given to them in any other character?

Now, my Lords, having referred your lordships to those documents which I take to be in evidence, upon which your lordships will have to decide the main question in this cause, if my learned friends say the main question is to be decided

now—there is another ground of argument which my learned friends have taken. They say, supposing originally the Irish Society received the lands as trustees for the Companies, supposing they did so, and that the undivided lands held by them they still hold as trustees for the Companies, yet that enough has taken place to warrant the assumption that there was some agreement between the Companies and the Society—that the Society should have some discretionary power over the lands. My learned friend seems to intimate that that was not his argument; if it was not his argument, it was the argument of some one of the parties. I was not present, and I am not answerable for stating correctly what was said. I have the statement of Mr. Wigram before me, which states that as the ground upon which they proceed. My learned friend misunderstands me if he supposes that I mean there was any distinct agreement: there was either an agreement or there was not—they were either trustees originally or not. I am supposing the question put upon the ground that they were trustees originally; but in some way or other, either by usage or agreement, some discretionary power has been vested in them, and that they are not subject to a controlling power in the exercise of that discretion. As far as I understand the notes of my learned friend, Mr. Wigram, it rests upon the assumption, that the Society have proceeded in the exercise of a discretionary power, and that they have distributed funds according to their discretion—that it has gone on for two centuries, and you are going to disturb a usage of two centuries—that there has been an usage clearly for two centuries, and from that you would infer that the parties were entitled to exercise a discretion.

Let us examine what is meant by this usage of two centuries; whether upon the documents my learned friends have read, or upon the Answer, or upon any statement in this case, the fact exists that there has been such a usage; and if there has been such a usage, has it been a usage adverse to them, or without their acquiescence and consent.

Now, first, the usage itself. What is it they claim?—a discretionary right to apply as much of the rents and profits in

their hands as they like, for any purposes they like, supposing they are public or charitable purposes, some limits of that sort.

Now for public buildings. I find, in the year 1622, they erected a town-house at Derry. We will see whether any public purpose was kept in view except locally to improve the property. The next public building, I find, was in 1730; and then there is 500*l.* for a stone bridge at Coleraine. Now upon this item, if it be meant to infer from this that they were to apply it for any public purpose, you will find in the original articles that the bridge of Coleraine was to be built by the King, and not by the undertakers at all. The next is in 1734, when there is 200*l.* towards erecting a market-house in Coleraine. In 1741 there is 700*l.* for building a market-house in Coleraine. In 1745 there is a very large sum indeed, 2050*l.* towards building a bridge at Coleraine. You will find entries in 1730 and 1745 both apply to a bridge at Coleraine; and besides that, you will find nothing but two sums for the market-house at Coleraine. We have a right to presume that the town-house and the market-house were the property of the Companies themselves; and it was therefore an expenditure for their benefit. No one can doubt that the sum expended for erecting the bridge at Coleraine was for the benefit of the Companies—they were the owners of the town of Coleraine; there is a market-house and town-house erected upon that property; and the other sum is for the repair of the bridge at Coleraine. Under the item of public buildings, that is the whole of the money that has been expended. We have other items of schools, churches, donations, and charities. We have analysed the different things; but under the head of public buildings, distinct from churches, that is all that has been expended. Now let us look at this usage. Was this done in spite of the Companies, or was it done with their consent? It is for their benefit, it is laid out upon their own lands, in erecting a town-house and market-house; and then, with respect to the bridge, it is an improvement of the town of Coleraine, which belonged to them. What is there to show it was without the consent, or without an application to the Companies? Nothing. But it is a curious usage of two

centuries, and an unlimited use of the public monies. When we consider where this money is to be expended, in the North of Ireland, I ask, was there nothing in the other counties in the nature of public works, bridges, and buildings? Were there no other public works you could apply the money to?—but that was the whole.

Now let us look at the items for that object, upon which Mr. Wood was so eloquent—the propagation of the Christian religion. What sums have they expended upon churches? The first item is in 1771: I do not know of any thing else. My learned friend says we are speaking of their books; we have their Answer before us, and the various documents before us, and, as far as we can discover, the first sum for building or repairing any church in Ireland was in 1771; 300*l.* to repair the church at Coleraine; and, in 1791, 100*l.* for rebuilding the church of Ballykelly: that is the whole for the rebuilding of churches. Now when my learned friend talks of the usage of two centuries, where is a usage of two centuries to apply the money to the reparation of churches in Ireland? I have stated the items as to public buildings, and there are two as to the churches. Were there no churches to be repaired from 1611 down to 1836 but the churches of Coleraine and Ballykelly? What have they been doing with the rents and profits? The fisheries were let in 1618 at 1600*l.* a-year. What were the town lands of Coleraine and Derry let for? What are the rents that the Irish Society have received? They have paid some to the twelve Companies; and, with the exception of those sums, where is the acquiescence of the Companies to their applying an unlimited discretion in the disposal of the funds in their hands? That is the whole as regards the churches. But there are other expenditures;—here are the donations and charities. The first is in 1687: 10*l.* paid to Joseph Bennett,—that was the man that passed through King James's army; then from 1687, independent of the schools, which are put down separately, down to 1739, there is no other item; but in 1739 there is 100*l.*—that was for Londonderry or Coleraine,—I cannot at the present moment find which. Then again, in 1748, there is 50*l.* to a

meeting-house. In 1757 there is 100*l.* to the relief of the poor,—I do not know in which place. Then they go on—in 1773, 30*l.*; 1774, 200*l.* to the orphans of the Rev. Burke Cuppage, deceased; in 1781, 100*l.* to the Londonderry Association; in 1790, one hundred guineas to another Society, and 50*l.* to the poor of Derry; in 1799, 5*l.*; 1801, 50*l.* to the poor of Coleraine; in 1808, 50*l.* to the poor of Derry; and in 1818, 30*l.* to the indigent roomkeepers of Derry—making in the whole 910*l.*—that is the whole sum paid in these years, from 1687 down to 1819. Is there any account any where else? The whole of the accounts are before your lordships, and my learned friends who are with me have gone over them very elaborately; and this is the result.

Now, with respect to the schools. In 1692, 20*l.* a-year was allowed to the master of Derry free-school; in 1740, a school established at Coleraine, and the master to have a salary of 20*l.* a-year; in 1742 an additional 10*l.* a-year to the Londonderry schoolmaster; and, in 1814, 50*l.* to the school at Muff; in 1815, 30*l.* to the charity school at Derry, and 10*l.* to the Presbyterian school. That is the whole to the schools.

Mr. JACOB.—In that book.

Sir WILLIAM FOLLETT.—Or any where else; I have confidence in the searches of my learned friend, and I can state that that is the whole; if my learned friends have any more, they can show them. This is my learned friends' case—not mine. This is their case, that there has been a usage that there should be that discretion. Where is the evidence of it? This is the ground upon which I understand they are to build themselves in the support of the proposition, that you are not to disturb the usage of centuries. Do they say so in their Answer?—if they do, where is the evidence of it? Is there any thing in these two donations to the churches, the charitable donations to the poor, or the payment to the schools, that would set up any discretion in the Irish Society adverse to the Companies? It is their right to do it against the consent of the Companies, is what they say now. That they have a right to do it with their consent nobody can doubt; but have they a right to be spending the money in any way they



choose without the consent of the Companies? Mr. Knight said, I had stated in my opening that there was no wish to disturb any thing done for the benefit of Londonderry, or for Coleraine, or the north of Ireland generally; but he says that the bill does not so state. I apprehend that the bill was bound to state that those parties were trustees, and had no right to exercise a discretion; but I say, as regards the schools, or any thing else that has been done that is beneficial, there is no wish to disturb it, and your lordships may make any order upon the subject to prevent it; but the object is to prevent the Society taking the control of this property: it is their desire to take the whole control and discretionary management out of the hands of those who claim to exercise it. This is the usage; in what way is the usage to be proved in this case? Pretty much in the same way as by analogy in any other. The meaning is, that the Irish Society have got some right paramount to ours. How is that to be proved? If they rely upon usage, they must show it has been adverse to the person against whom they claim. If you can show me that those persons have exercised a usage against our consent, I admit it is very strong; and after the statement of Mr. Knight, or my other learned friends, you might almost say the plaintiffs had no case—it would be very strong. Here you have a statement set up of a judgment of a Court against them; and if they were to acquiesce in it without taking legal proceedings, it would be so strong as to be almost conclusive. But I find no trace of any thing of this kind in the whole two centuries. I find the payment of money, but I do not find that any payment of money has been made against the wishes or the feelings of the Companies at all; they are in the receipt of money in Ireland, and they would have to pay it under their directions; but what is there to show they paid it against their acquiescence? But if you have payments made, the character of which is equivocal, and it may be doubtful whether it was done with the consent of the Companies or against their consent, we are to look at the conditions of the two parties and their relative situations. Look at their origin, and you will find whether these payments were made against the consent of the Companies, and in the exercise

of the discretion of the Society, or according to it. Look at the documents, look at the Answer of 1683, the Memorial and the Case in 1715, and the opinions upon it. Look at the proceedings of the Society contemporaneous with these payments; do they not give a character to those payments? Do they not show, when you look at the language they hold, and the Answer in Chancery, and in the cases by which they consult their own counsel; do they not show that the payments are not made according to their own discretion, but in the character of trustees for the Companies of London; and that the Companies have as much interest in the north of Ireland as the Irish Society? They are large landowners, and the lands are of great value, in addition to the undivided property; and would they be unwilling to spend 300*l.* upon the church at Coleraine, or 100*l.* upon the church at Ballykelly; or would they be reluctant to spend money upon the town-house of Coleraine? Not at all; but show me they have been spending this money upon purposes that the Companies were not likely to acquiesce in, then it would be strong evidence; but here is no evidence of any usage against the Companies—on the contrary, every thing shows that they acknowledged themselves to be acting as trustees for the Companies: that is the other point. Admitting, as they must be taken to admit, that they were originally trustees, still they say there is a usage to support the claim they now set up; have they made out that usage, which, against these documents, would show that they were any thing but trustees for the benefit of the Companies, holding the property they held for the benefit entirely of the undertakers of the plantation in the north of Ireland?

Then, my Lords, what else do they state, as far as regards the public purposes for which this Society was formed? I do not find that they rely upon any other documents. I do not find that they rely upon any thing; they state nothing but the documents I have referred to, and the acquiescence in the usage by these parties. Now it was stated by one of your lordships, that it appeared there was evidence of the exercise of some discretionary power by these trustees. If that means the exercise of some discretionary power by these trustees contrary

to the wishes or interests, or adversely to the interests of the Companies, I apprehend, with great submission to your lordships, here is no trace of it at all upon these proceedings. They received the monies, and disbursed them in Ireland, in the way I have described. I admit that they are the parties who received the 1600*l.* for fishings, and the rents for the lands, and disbursed the money, partly for the poor of Ireland and other purposes. I admit that; but I deny that they did it in the exercise of their own discretion, or assuming any power inconsistent with the general affairs of the Companies; the whole case is a blank on that side, but not on the other, because there are the contemporaneous documents, describing the footing upon which they stand, and the character in which they held the property, and received the rents and profits that accrued.

Now what answer do my learned friends make?—but before we come to the particular terms of the motion, I will say a few words with respect to the City of London,—what is the claim they set up? My learned friend, the counsel for the City, says, the only claim they set up is, that they are visitors of the Irish Society; and we ought to follow out that assertion of his, that the remedy that the twelve Companies ought to have taken, instead of this bill, was by application to the City of London as visitors;—that is the only ground upon which he puts the claim; but that is not the only ground upon which the counsel for the Irish Society put it, because they contend that the City of London have some interest, in some way or another, in this property; that they are not bare visitors, but in some way have some control over it—in what way does not very clearly appear. Suppose I conceded, for the moment, that the City of London were visitors,—I could hardly concede it for argument upon these documents,—but is that any reason why parties entitled to the fund should not apply to this Court? I apprehend none whatever. For the regulation and internal government of the affairs of this body, if there were any such visitors, they would be the ordinary persons; just as in the case of visitors to a school or college, in the internal regulation of the school as to the masters, as in the case of

the Berkhamstead school ; but the moment you charge a misapplication of the funds, this Court is the only tribunal ; and therefore this Court is the Court to come to, even if the City of London were visitors, when we are met by the claim, now set up, of the right to apply the rent and profits of this property to the purposes the Irish Society choose to apply them to.

The case of the Recorder was, that we were attempting to oust the City ; his argument was like a claim of cognizance, as it is called in our Courts, which you are to save to the City of London, if you complain of any mismanagement ; and for this reason,—that they were an emanation of the Common Council, that the King had granted to the Mayor and Aldermen the power of removing ; they are elected from them, and therefore there is that jurisdiction which you are to apply to ; and you may get them removed, and others appointed. My Lords, we make no charge against any individual members of the Irish Society. Nothing of the kind has been stated, but against the Irish Society itself—it is a corporation—a corporate body ; the charge is against the whole of the Corporation—the corporate body—for not conducting themselves properly in the trust that they manage as trustees. We do not make any complaint upon any subject upon which the Corporation could do us any good, in removing one set of gentlemen and appointing others ; the complaint is against the Corporation of the Irish Society, to have a Declaration from this Court, that they are trustees for the twelve Companies, and managing this property for them. But taking it to the full extent, I apprehend the doctrine of this Court is clear, and the case alluded to is in point—the Court will not interfere with visitors properly appointed, but they will take care that the monies and the funds are paid into the hands of the parties entitled to it, and that this Court is the proper forum.

Then what becomes of the claims of the City ? According to Sir Charles Wetherell, this is the whole—it is no more than that they are visitors ; he can put it no higher. Suppose they were ; what answer is that to this Bill ? I believe I am

stating what will not be disputed, that this is no answer at all, when you look to the nature of the bill and answer.

My learned friend, Sir Charles Wetherell, has addressed your lordships for a considerable time, and the Recorder of London, upon a supposition that has no bearing upon the case. If they put it no further, it is no answer to the case. I forgot, for a moment, the case that was referred to by my learned friend, the case of *Gray v. Chaplin*, that was upon the other part of the case, as to the acquiescence. I suppose, from my learned friend's stating it, that it is the strongest authority that they can find to support their view; it was in *2d Russell*. That case was this:—there was a private Act of Parliament,—a Canal Act,—under which the parties had power to lease for seven years; a lease had been granted for a longer term, with the assent and with the advice of the shareholders of the Company, for certain advantages and certain reasons which induced the shareholders to agree to it; the party took possession under the lease, and was in possession, having an interest for forty-seven years. The shareholders came to this Court to set the lease aside, and the Court said they could not do it, they having acquiesced in the interest being communicated to the party, and he being in the possession and enjoyment of a beneficial interest under their consent, that they could not appoint a Receiver; the Vice-Chancellor had taken a different view, and appointed a Receiver in that case, but the Lord Chancellor altered it. Are the facts there at all like these? Here was a person having a beneficial interest for his own profit, under the acquiescence of the persons asking for a Receiver. What has that to do with this case? Here are parties who have no interest,—they are simply trustees,—and all that can be said is, that we have allowed them to expend certain sums of money in the north of Ireland, in which we were as much interested as they were, and ought to have as much pleasure in seeing so distributed.

But now, with respect to these visitors, the case of the Berkhamstead School would be an answer. But let us look at the facts of the case, and this will put you in possession of

the real history of the case. What had the City of London to do with it? They were the parties to whom the Crown originally applied; they were the parties with whom the agreement was made; where did the money come from? Exclusively from the twelve Companies. Whom was the land to be given to?—To the twelve Companies. What was the Corporation at that time?—It was an emanation from the twelve Companies. No man could be even a freeman of the Corporation that was not a member of the twelve Companies; and the actors and leading members were generally the leading members of the twelve Companies of London. To use the language of the Recorder, What did the Corporation do?—The moment the Corporation of London had agreed with the Crown, they attempted to raise this money from the Companies; the Companies were persons distinct from the Corporation, to take the land and advance the money. The Corporation of London were nothing more than the representatives of the Companies—the stipulation is for the benefit of the undertakers. Did the City of London undertake it?—Not in that character; they advanced no money; they did nothing; the Corporation of the twelve Companies did it; the Common Council, the representatives of the twelve Companies, were the persons with whom the transaction was conducted. The City of London are the persons mentioned; the City of London throughout are the persons with whom the King treats and contracts; but the conveyance is to the persons advancing the money to purchase the land. The counsel for the City do not say they had any interest in it. I am not quite sure that I understand the mode in which my learned friends for the Irish Society have put it. I am not sure whether it does not come to the same thing; that they are in the nature of visitors, and have some control over it. If they have, it is no answer. But according to the view I think your lordships will take of this evidence, it does appear to me the City of London have no interest as visitors; they have the power of electing the Corporation, and removing, but for what purpose?—Because they were the persons representing the parties interested at the time. My learned friends admit, and it is proved over and

over again by the statement of the City of London, they stated it in their petition to the King—what do they state?—the language may be worth bringing to your lordships' attention; they state—" In the information in the Star Chamber by your Majesty's Attorney-General against your petitioners, and the said Society of Governor and Assistants, it was amongst other things decreed by that Court, that they find it very convenient and necessary to call a Common Council, as well touching the matters in difference between your Majesty and the City, as for divers other occasions. That being trusted to choose the Governor, Deputy, and Assistants of the said Society, for the benefit of the Companies, that make up the body of the City,"—it is a very strong expression, showing they were acting on behalf of the Companies. Then they go on to say that they ought to choose the Governor, Deputy, and Assistants of the said Society, for the benefit of the Companies, that make up the body of the City; and then they ask that they may have liberty to go on to do so; and in the petition to the Commons they say, " That about July, in the seventh year of the reign of our late Sovereign King James, a proposition was made by the Lords of his said late Majesty's Privy Council to the City of London, to undertake the plantation of divers lands of great extent in the province of Ulster, in the remotest parts of the North of Ireland, at that time deserted by other planters, which the City at first refused to undertake; but upon the pressing importunity of the said Lords," that is, the Lords of the Privy Council, " that some selected persons from the City might be sent to view the country, and that the said plantation might be undertaken; and upon signification of his said late Majesty's earnest desire to further the said work, and upon tender of large privileges and immunities to invite them thereunto, certain persons of that City were employed to view the premises; and upon their return divers Aldermen and Commons were appointed to take into their consideration how so great a work may be performed, and money raised for the doing of it; by whom it was conceived that it was fittest to be done by the Companies of the City, and in the Companies by the poll; and that the said plantation should be managed by

a Company, to be elected for that purpose; and that the said Company should take by grant from his said late Majesty, the said lands, to the end that they should assign them over to the use and benefit of such from whom the said monies were to be raised; and divers other matters were by them thought meet to be required for the accomplishment of the said work, which consideration being by them presented to the Lords, they were by them allowed and approved of." I pause here for one moment: the statement of the City we have a right to use, and their statement corroborates the other documents in the case. As regards the public purposes set up by the Irish Society, here is a statement by the City of London, in the time of Charles the First, that the object was, that it might be regranted to the twelve Companies, making no distinction between the one species of property, now called the divided and the undivided lands, but stating the King granted those lands for the purpose of their being regranted—that is another document showing it was not for any public purposes. Then they state that "the Corporation of the said City of London never undertook to disburse any money thereabout, but their name was only used for the better transaction of that business, and only as a mean to forward the plantation, and raise monies by and from the several Companies and particular persons as aforesaid, which otherwise could never have been effected." Now, my Lords, that is a true statement of it, and I do not see that it makes against the plaintiffs' case at all, that there should be a reluctance on the part of the Companies to do that which they would not have done but for the Corporation of London; and therefore I would concede to my learned friends that which they laboured to show; I say, the twelve Companies would not have done it but for the constraint of the Corporation of London; but does that prevent the Irish Society being trustees? I apprehend not. What do the City state? That they disbursed no money; "that their names were introduced as the means to forward the plantation, and raise monies by and from the several Companies, and particular persons as aforesaid, which otherwise could never have been effected." My learned friend, Mr. Randall, says that the



whole of this petition, in point of fact, is an utter falsehood: that is the way this is met; that the Corporations of those days had fixed the corporate seal, and the corporate officers of those days, so early as in the reign of Charles the First, by a solemn act of theirs, stated from the beginning to the end, what my learned friend describes as an utter falsehood. He says, not only it is not true that their names were used in it, but that they did not disburse any money. Their statement shows that they disbursed 400*l.* at one time, and 300*l.* at another; and this is what my learned friend builds himself upon, that in the reign of Charles the First they stated what was not true. Is there any statement any where that any body advanced any money for the purchase, but the twelve Companies? The City here state, under their common seal, that they advanced none, and that their names were used to forward the business. They say, "That his Majesty, under the great seal of England, bearing date the 29th day of March, in the eleventh year of his said late Majesty's reign, granted these lands, to the end they might distribute the same to the several Companies of the said City, that had borne, and were to undergo the charge of the said plantation; and in pursuance of the said intention, the said Society did, by virtue of a license from his said late Majesty, under the great seal of England, grant unto the twelve chief Companies of London, to the use of themselves, and of such other Companies of London as were joined with them, sundry great quantities and parcels of the said lands, tenements, and hereditaments, according to their respective disbursements, and retained in their own hands such things as were not properly divisible for the defraying of the general works of the plantation." Your lordships will observe, it is upon that statement that the charter of King Charles is drawn—that was the reason they published it; they state that it is the statement in the former charter, and the charter of King Charles is taken from this petition.

LORD CHANCELLOR.—Where is this document; is it in the book?

Mr. LLOYD.—It is in the document set forward by way of schedule.

Sir WILLIAM FOLLETT.—It is set forth in the bill—it is in the pleadings—the Petition to the House of Commons, respecting the *scire facias*, and proceedings in the Star Chamber; and if you will compare it with the charter of Charles the Second, you will find that the recitals in the charter are taken from the petition, upon which the regrant took place. Here we have the statement of the City of London themselves, and do we find any thing of the usage now set up? I do, with great deference, submit to your lordships that the history of the case is perfectly plain; nothing can be plainer than the application of the King to the City, and the City's application to the Companies; but here you have the statement of the City of London, a very few years afterwards, probably in the life-time of many concerned in it, describing the whole proceeding. And what is the whole proceeding? Exactly what I have attempted to describe as the result of the proceeding. It seems that the King is desirous to plant that part of Ireland; he applies to the City, and the City apply to the Company, and by their urgency the Companies are induced to consent and advance the money. Then the King grants to the Irish Society the lands to be divided among the Companies; it is not granted to the Society, except that part not divisible. Then what right can the City of London set up? Where is there any trace of it? There is the resolution of the House of Commons, proceeding upon the same assumption, that the City of London were acting for the Companies, and that the Society were the trustees for all concerned in it. The petition to the King, and the resolution of the Commons, proceed upon this, and this is in the reign of Charles the First. This is decisive—they say it is false; but I ask my learned friends how it is to be got over? The City of London say so; but they say it was to avoid a fine. There was a large fine to be imposed upon them, and, though this statement proceeds from them, it is not entitled to any weight—it was done to avoid a fine; and so they say the statements of the Irish Society are not entitled to any weight, because they were members of the Companies. How is it possible to understand it, except by looking at the contemporaneous documents? That the City of London might

have stated what was an untruth to avoid a fine, I admit; that they might have made allegations unfounded in fact, I admit—but you must take it *prima facie* that they are true, unless you have evidence that they did state what was not true; we must assume it; and so soon after the transaction took place, upon a public petition made in the face of the public, and in the face of the Irish Society, and in the face of the twelve Companies, the King and the Court, how are we to suppose that what is stated in it is not true? There must have been persons about the Court that would know if it was not true, as well as persons in the City, and persons in the public; I apprehend it is a very strong document, a statement and assertion of the City, not only of their own interest, but a statement of the City of London, also of the original purposes for which the Irish Society was formed, namely, as trustees for the twelve Companies, and for no other purpose whatever. Did they know how the Irish Society was formed? According to my learned friend, it proceeded from them—it was at their recommendation—it was an emanation from them; so was the project for dividing the land, and retaining the undivided land, and retaining the timber. Then they knew the whole. Here is their statement. Is not this the statement they made in the outset? and is not this clear from the other documents in the case? It is consistent with the other documents in the case, and shows that the view I presented to your lordships was a correct one—that this Society had no duty but to watch over the interests of the Companies and the interests of the City.

My Lords, those are the two points upon which my learned friends appear mainly to rely; namely, the interests of the Irish Society and the interests of the City of London. Suppose we have disposed of them,—and I apprehend I am not speaking with too much confidence when I say you will feel that I have—and that, as far as regards the constitution of this Society, they are trustees to the twelve Companies.

But there is another difficulty. It is said, you are now upon an interlocutory motion, and applying to have a Receiver appointed, and the money paid into Court, and that the effect will be, if you appoint a Receiver, or direct the money to be

paid into Court, you will annihilate this Society, because they have no other property, and nothing else to manage. Now, my Lords, let us see for a moment how this arises.

There is another point I omitted to draw your lordships' attention to, with respect to those public trusts supposed to exist. My learned friends referred to several local Acts of Parliament touching the Irish Society. I am not going to read them—they are Acts passed in the last year or two, all of them, I believe—one was in the reign of King George the Fourth, and the other in the reign of William the Fourth. I understand my learned friend referred to other Acts, one relating to some claim of the Bishop of Derry, in which this Society is recognised.

MR. JUSTICE BOSANQUET.—The earliest is the 49th of George III.

SIR WILLIAM FOLLETT.—Yes, my Lord, no doubt there are acts recognising it; but the question is, whether it recognises them in any character different from what I have stated. These private acts reciting the interests or the titles of other persons, are no evidence at all. Your lordships may remember a case that excited a good deal of dissension in Westminster Hall, as to the Cambridge tolls; there was a recital in a private act that they were entitled to the tolls—they sought to use it afterwards as evidence to show that they were entitled to the tolls, but the Court held it was no evidence at all; it is the statement of the parties who bring in the act, and is not to conclude other persons. The case I allude to is *Brett v. Beales*; but the doctrine has not been disputed since that; you cannot take the recital of an act as any evidence bearing upon the cause, one way or the other. Whatever there may be in these acts I do not know; I was not aware of them till Mr. Wood mentioned them, but I apprehend they can be no evidence of any right or title in the parties. I should rather think that all that they would amount to would be a recognition of such a Corporation in managing the affairs in Ireland; I think I could venture to say that they do not recognise that Corporation as trustees for any public purpose, distinct from their character of trustees for the Companies; that I may say without

seeing them—that is a claim set up of late years. My Lords, one of the acts to which they refer, namely, the settlement of some question with the Bishop of Derry, related to this property, in which all the parties were to a certain extent interested; and there is also an act relating to the Fort of Culmore, which the Society were bound to keep up, either by the act or charter, I forget which it was.

My Lords, there is one other point to which I will call your attention. What part of this fund are they trustees for? Is it the whole, or is it indefinite? What is to become of the residue? Is it not a new species of trust to be recognised in the Courts of this country, in which trustees are to have a discretion over as much of the funds as they like, and apply the residue to some particular purpose? The surplus, my learned friends have said, is to go to the twelve Companies—the surplus over what? How is the surplus to be defined? Suppose you apply the whole, where is the surplus? Have you a discretion to apply the whole? Do you mean, then, that there is no surplus? If you have not discretion to apply the whole, what part can you apply? Is there any instance of a trust of this description? Can you find any instance of a trust, where the parties are to have unlimited power, and yet apply the surplus to a particular purpose? That is their statement. I am not aware of any such trust; it seems to me to be an indefinite power, without giving them absolute dominion and control over the property—it is making them trustees for the Crown, but not for the Companies, which, according to the argument of some of my learned friends, they are.

Now, with respect to the magistrates of the city of Londonderry, the Irish Society have two distinct duties. They have the distinct duty of superintending the by-laws, and are to a certain extent vested with control over the corporation of Londonderry, independent of the rights and powers they exercise for the twelve Companies; but the power they have over the corporation of Londonderry requires no expenditure or disbursements; there is distinct provision in the charter, by which the expenses of the magistrates of Londonderry are to be defrayed, but there is nothing requiring any disbursement

by the Society. I mention that, as a point that was referred to as a point inconsistent with their character as trustees. I apprehend it is not inconsistent. The King incorporates, and the City appoints; and to give a general control over the by-laws of Londonderry, it is vested in them.

Now, my Lords, with respect to the form of the motion, my learned friend says we are premature, and that your lordships may be destroying the Irish Society by granting the prayer of this motion. I will certainly agree so far with my learned friend, that if the case was now ripe for the hearing, I do not think there would be any other point or evidence than are now before you. But now for the nature of this motion—what is our charge? Our charge is, that you are disbursing improperly. Now I must call back to your lordships' attention, that though my learned friends have stated, that the Irish Society have a right to distribute the money for public purposes at their own discretion, none of my learned friends have contended that they have a right to distribute the money in the way that they have. My learned friend, Mr. Knight, said—"If your lordships were of opinion that the money expended in tavern expenses was improper, that the Society would cease to do so; that if you were of opinion that the money expended by the Society one upon another in plate and portraits was improperly expended, the Society would not do it." But, my Lords, what have the Society done, and what have they been doing since the filing of this bill, and their Answer? The expenditure of which we complain did not cease upon the filing of the bill—that expenditure of which we complain has not ceased upon their Answer, and yet they do not pretend to say they justify it. Then are we not entitled to this motion? Under what part of my learned friend's argument can they justify this expenditure of 5034*l.* 9*s.* 11*d.* for the management of the property? Under what head is this to be justified? My learned friends expressed their surprise at the opening of my statement. I read the items then—seven of my learned friends have been heard since, and what explanation do they give? There is a charge for management amounting to half the income of the Society, and that charge for management was a charge against them I made in the outset. Seven of my

learned friends have been heard, and what is their answer? Here is the item:—"Salaries in Ireland." This is the statement of the expenditure of this Society for eight years; the receipts and the expenditure.

LORD CHANCELLOR.—Ending at what time?

Sir WILLIAM FOLLETT.—1832—the actual receipts from 1824 to 1832, and the expenditure in that time of the management, taken from their Answer—it is their statement.

Mr. JACOB.—It is one of the printed statements.

Sir WILLIAM FOLLETT.—Salaries in Ireland, 4670*l.* 11*s.* 3*d.*; salaries and gratuities in England, 5973*l.* 16*s.* 9*d.*; surveying expenses, 18*l.* 12*s.*; law expenses, 8039*l.* 10*s.* 5*d.*; incidental expenses, Ireland, 3837*l.* 2*s.* 8½*d.*; incidental expenses, England, 2729*l.* 1*s.* 0½*d.*; deputation ditto, 3025*l.* 13*s.*; tavern expenses, 3799*l.* 2*s.* 3*d.*; allowance to members, 3413*l.* 10*s.*; Irish Chamber, 4769*l.* Now those are the items that my learned friends, who are with me, have collected as properly reducible under the head of management. There are salaries, &c. Ireland; salaries and gratuities, England; surveying expenses, law expenses, incidental expenses, Ireland; ditto, England; deputation expenses; tavern expenses; allowance to members; Irish Chamber expenses;—I do not very well see under what head you could reduce them,—and the average of it is 5034*l.* 9*s.* 11*d.*

LORD CHANCELLOR.—The last item was building.

Mr. JACOB.—That includes building, and expensive law-suits.

Sir WILLIAM FOLLETT.—The same proportion has continued since.

Mr. WOOD.—That we do not know.

Sir WILLIAM FOLLETT.—Suppose we take out any items that are doubtful, have they a right to expend this sum of money in tavern expenses?—have they a right to expend this money in gratuities one among another? Salaries, I admit, if they are fair and right salaries to the servants, the parties have a right to them, although they are amazingly large; but what right have they to these tavern expenses, or the allowance to members? Tavern expenses, 3799*l.* 2*s.* 3*d.*; salaries and gratuities; incidental expenses, Ireland, 3837*l.*; incidental

expenses, England, 2729*l.*—the law expenses I do not go into: whether they will include a contested election for the borough of Coleraine and the petition, I do not know; I suppose they do, as it occurred during that time.

Now, my Lords, have they a right to be expending the money in this way? We have taken these eight years; it may be that some of those are matters that might not occur every year; the aggregate may not be so great, and instead of five thousand pounds it may be two or three thousand pounds, or some less sum; but what are we to say to an estate of 10,000*l.* a-year, with such an expenditure as this? What money has been distributed among the Companies? 1200*l.* What has become of the rest? 1200*l.* a-year out of 10,000*l.* is what my learned friends would call the surplus. Where is the rest?—where is the surplus? They say they have distributed it for public purposes: when did they begin to distribute at such a rate as that? I have shown the items paid at other times. When did they begin to expend three or four thousand pounds a-year upon public purposes? Is that not enough to induce parties to apply to this Court? 1200*l.* is the whole sum divided among all the Companies. What has become of the rest? I apprehend nobody could say for a moment, taking any view of this case at all, that those parties are justified in that expenditure. But if your lordships agree in the view I am taking, that they are trustees for the Companies and not for the public purposes, what sort of a case is this—that out of 10,000*l.* they give only 1200*l.* to be divided among the Companies? What is the expenditure then? Have we not a right to make this motion? We ask for a Receiver. Suppose you say we are not entitled, under these circumstances, to a Receiver, is there no part of the motion we are entitled to? Are we not entitled to have the money paid into Court? Are we not entitled to have the money over and beyond the schools, which we do not wish to interfere with, paid into Court? Are they to go on expending the money in tavern expenses, or in portraits, or pieces of plate, or in gratuities to members? My learned friends say—"You would destroy the Society;"—but where is the objection to have the money paid into Court? Again, as to these public



purposes, I say they have no right so to distribute the money. I have no right to interfere with those that are settled; but have they a right to go appropriating this money to public purposes, during the pendency of this suit, expending four or five thousand pounds a year in public purposes? Why should they not, pending this suit, pay this money into Court? If you are of opinion, ultimately, that the Irish Society had no right to make these disbursements, how are the Companies to be repaid? Where are they to look for this, if you think that they are ultimately entitled to it? My learned friends say the Society have no funds at all; you cannot look to them for it. The Companies would have no mode of obtaining repayment of any money, which you might ultimately think had been wrongly paid, unless you granted this motion; and therefore they may go on, if this suit lasts, making this expenditure, without any possibility of the party ultimately being recompensed, or receiving the money to which they are entitled. Is not this a ground for this motion? The application is,—that they shall pay in the money in their hands; but I apprehend we shall be entitled to have a Receiver appointed. My learned friends objected at first to having a Receiver, on the ground that all the parties were not before the Court. You have them now;—how many of the Companies are there? There are twelve great Companies, and forty-two altogether; they are all before the Court. My learned friend, Mr. Jeremy, appeared for one to-day; I understand he neither acquiesces nor objects, but hopes to be paid for coming here. But the only persons who dissent are three.

Mr. JACOB.—O dear no!

SIR WILLIAM FOLLETT.—Who are they? I believe there are only three. My learned friend says there are more; if he could mention the names, I should acquiesce. I am told there are only three, and a great majority of the rest are supporting this application; there are only three dissentients. Mr. Wigram appears for the greater part with myself; we ask for a Receiver pending the suit; and if your lordships are satisfied that the Irish Society are setting up a claim inconsistent with their character altogether, and that they are setting the persons for whom they are trustees at defiance, and spending their money

in a way they ought not to do, we should be entitled to a Receiver. What is the harm that would be done? My learned friend says that the Society would be annihilated; they have no funds, I admit;—but why should not those funds be received, pending the litigation, by a person who will not spend improperly the monies of the Society? They say in their Answer, which they have read, that they will continue so to do. Why should not, pending the suit, the money be safe? They say they have a right to go on spending it. My learned friend, Mr. Knight, felt he could not support that; and said, if your lordships say we ought not to be guilty of this expenditure, we will not,—that shows we have a right to make the motion. I know the value of such a concession on his part, that the Corporation have done what they are not entitled to do; and I have a right, upon that concession, in that statement, to have the money paid into Court; it is a concession that the parties, in his view of the case, are entitled to it. But they have been doing much more:—the money they have been expending, for what they call public purposes,—money they are not authorised to expend, and at least we are entitled to have that money paid into Court; it is no answer to be told that the whole case has been gone into upon motion. It is true that the whole case has been elaborately gone into; but that is no answer to us. It is said we have come to feel the pulse of the Court, and have not come in time. The answer, first of all, was excepted to; it was amended in November 1834, and this motion was made in the April following—that was the long delay; by stating, in their first Answer, an expenditure greater than their receipt, 18,000*l.* more than their receipts; it was necessary to except; the Answer was corrected; the correction took place in November 1834, and this motion was made in April 1835.

Mr. WOOD.—That was the Answer to the amended bill.

Sir WILLIAM FOLLETT.—I apprehend there was no delay; the parties were attempting to compromise, and failed; it is true it is not till recently I have had the honour to address your Lordships; but notice was given in April 1835. They proceeded by filing their bill, my learned friend says, as soon as the Corporation was altered in its character. No;

it was as soon as they chose to assume other powers than those entrusted to them. When they assume those powers which they take upon themselves to do, formed as they are, not by the members of the twelve Companies but out of the Corporation generally, when they are assuming the powers claimed to-day, we were bound to take proceedings; the bill was filed, and the Answer put in; an amended bill was filed, and upon this motion they now come to-day, still insisting upon their right, and saying they have a right to dispose of our funds at their discretion; they do not admit our right, and they will persist in doing it, according to the tenor of their Answer, during the whole progress of this suit, unless you prevent them.

Then how do we stand? Have we made out no case to call upon your lordships to say, that the money shall not be expended during the suit? Have we not satisfied you we have that right? There would be something in it if we had any means of recovering against these parties if they expend it improperly; but one of their great arguments is, that they have no money; and if we have made a case to entitle us to this relief, you will interfere to prevent this expenditure. I do not understand that my learned friends have made out any answer to this, according to the practice of this Court; the practice of the Court is, if we have made out a breach of trust like this, you would grant a Receiver. Is the case stated by Mr. Wood at all like this, where a person had an actual beneficial interest? Is it like these parties denying their character of trustees, and insisting upon their right to spend the money of their *cestuisque* trust? I have examined my learned friend's arguments, and can find none directed against this motion, except the one that would fall back upon this question, that they were not trustees for this purpose. I understand it appears since the filing of the bill, in their Answer, that they have expended 895*l.* 13*s.* 1*d.* for tavern expenses, and 953*l.* 5*s.* in gratuities to the members; that appears since the filing of the bill in their Answer. Are they not going on doing it, and what reason is there to suppose they are not doing it after their Answer?

Mr. Justice BOSANQUET.—Do you know what time that comprises?

Mr. LLOYD.—From the filing of the bill to September 1834.

Mr. JACOB.—That is the last date in the account.

Mr. LLOYD.—The bill was filed in July.

Sir WILLIAM FOLLETT.—This is from the filing of the bill that they have expended this sum. Then are they going on doing this?—No doubt they are. How are we to be repaid? We cannot be unless your lordships interfere by this motion. But I say further, they are going on exercising their discretion, applying this money to public purposes. What public purposes?—I do not know; they may be of the same description as the public purposes relating to the borough of Coleraine; and will my learned friends say, in their Answer, that that was done before the Society was reformed, when the Society consisted of members of the twelve Companies? It is a most extraordinary argument that, because a person is a member of one of the twelve Companies of London, that the Irish Society are to be allowed to distribute this fund in the payment of election expenses, which those members may choose to think was right: for aught I know these were public purposes of the same description. I apprehend they have no right to exercise their discretion, and spend money in contested elections, which they call a public purpose, opening the borough of Coleraine. They have no power over these funds in any way, except that in which the Companies participate; and upon this ground also I submit we are entitled to this motion. I think I may say it is impossible for your lordships to decide that we have not made out a case showing they are trustees. They deny it by their Answer; and they are making expenditure inconsistent with their duty. If this goes on, we have no means of getting the money back; and I submit to your lordships, according to the practice of this Court, we are entitled to the prayer of the motion.

LORD CHANCELLOR.—We will give judgment in this case in the course of next week.

[Adjourned.]

*Saturday, 27th February, 1836.*

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## J U D G M E N T.

**LORD CHANCELLOR.**—In this case the plaintiffs, who are the Skinners' Company, and who, according to their own representation, constitute one out of twelve, (as they call them,) "the twelve great Companies," but, in fact, one out of forty to fifty Companies who appear to have been the original adventurers in the settlement in the North of Ireland, apply to the Court, that the defendants, who are the Irish Society, may be ordered to pay into Court the sum of 4719*l.*, appearing by the Answer of the defendants to be in their hands, that the money, when so paid in, may be laid out, and that a Receiver may be appointed of the rents and profits of the estates, in the pleadings mentioned to be in the possession of the defendants, the Irish Society, and that the Irish Society may be restrained by the injunction of the Court from getting in the profits, or any part thereof.

If it had not been for the great magnitude of the question this suit raises, not only affecting all the Companies in London, but affecting the Irish Society, and affecting a large district in the North of Ireland, for whose benefit a considerable expenditure has for two centuries been in the habit of being made out of the funds in question, I should not have thought it necessary to take any time to consider the judgment in this case. It has been said that the object of this motion was to obtain, if possible, the opinion of the Court upon the points contained in

the pleadings, and which constitute the subject of the suit: if that is the object, I certainly shall, to the best of my endeavours, disappoint that object, for I think it is a course extremely inconvenient to encourage; and though it has been sometimes done in this Court, I think it is a course which by diverting the ordinary proceedings of this Court, is attended with great inconvenience and injustice to one party, to the benefit of another. It may be very convenient for the plaintiff to feel his way, to ascertain what is the feeling of the Court, and no doubt many applications of this description have been made for that purpose, and that purpose only. I consider that the Court is bound not to go out of its way to give the plaintiff the opportunity of obtaining, previous to the hearing, the opinion of the Court upon the subject-matter of the suit, which is certainly a great benefit to the plaintiff, to the prejudice of the defendant, and that the Court is bound to express its opinion only so far as is necessary to show the grounds on which it disposes of any interlocutory application. I consider that it is the duty of the Court to confine itself to the point upon which it decides, and not to go into the merits of the case.

I shall therefore abstain, as far as possible, from giving any opinion as to the very important questions raised in this suit, the question being neither more nor less than this—Whether upon the settlement in the North of Ireland, under which the towns of Londonderry and Coleraine were established, and a large district given up by the Crown to the City of London, or to the Irish Society, or to the twelve Companies, the settlement of that property constituted the Irish Society simply ordinary trustees for the benefit of the twelve Companies, of which the Skinners' Company constitutes one; or, whether it was not accompanied with certain public purposes, and certain public trusts, independently of the private benefit of those twelve Companies? It is quite sufficient for my purpose, for the purpose of the present motion, to state that this is the question raised upon the pleadings, and that it is a question which, at all events, on the part of the plaintiffs, cannot be treated as a question free of very considerable doubt on their part.

It is impossible to look at either of the two charters without

seeing that this was a transaction in which the Crown parted with large possessions for the benefit of that part of the King's dominions; that it was part of the contract that the Irish Society should be established, and that, on the establishment of the Irish Society, certain important duties were, by the charter, vested in that Society; that it was to superintend the corporations established in the towns of Londonderry and Coleraine; that other very important duties were attached to the existence of that Society, and that the Crown was a party to that contract, as being a part of the transaction by which the Crown parted with its possessions in the North of Ireland; and from that time, down to the present time, the Irish Society being so invested with this property, have exercised power and control over its income; not in a way in which trustees exercise power and control, who are mere naked trustees for some other persons; but they have exercised power and control over it for public purposes in Ireland, totally independent, unconnected with, and, apparently, in many instances, unauthorized by any previous consent of the Companies in London,—that has now lasted for two centuries, and now, at the end of two centuries, one of these Companies files a bill, not bringing the Attorney-General before the Court, whose duty it would be to protect the public interest, which may be supposed to be vested in this Society; but treating the transaction entirely, and so arguing it at the bar, as a transaction which made the Irish Society mere private trustees for the twelve Companies of London. Assuming that to be the situation of the Irish Society, and assuming those to be the rights of the twelve Companies, the bill asks, in the ordinary terms, for the control of this Court over these defendants, in their character of mere trustees. I will say no more as to the connexion of these several parties. I will say nothing of the interest claimed by the City of London, as opposed to the twelve Companies. I will say nothing of the connexion which has subsisted between the Irish Society and the twelve Companies, so far as it may be deduced from the mode in which they have dealt with a part of the property which they have divided among the twelve Companies.—But the question is,

whether the Court can treat the Irish Society as mere naked trustees for the benefit of the twelve Companies of London, without any duty or discretion, or concurrence, vested in them? If the Court cannot, in this stage of the cause, so consider them, there is an end of the application for a Receiver, and an injunction. This case is an important case, (even supposing it to be a case of great doubt and difficulty,) with respect to which, the Court should hesitate before it came to a conclusive opinion: it is quite clear that, on a motion for a Receiver, the Court would not take this property from those who have for two centuries exercised the power and control over it by putting a Receiver upon it.—It is well known that, where a corporation is trustee, whether for charitable or other purposes, their rights, as trustees, do not arise from the private acts of individuals, but from the original grant, on which their authority as trustees rests: and the Court cannot, without grave consideration, and will not, where the usual mode of dealing with the property has not been departed from by the defendants in the suit, interfere with that by interlocutory order. Here the Court is asked, by interlocutory order, to take upon itself, by the hands of its Receiver, to administer this property in the North of Ireland. It must either, therefore, take upon itself to administer this property, with reference to that which is fitting to be done in the North of Ireland, by making this expenditure, of which that portion of the North of Ireland receives the benefit; or it must entirely stop all those payments, and reserve the money in the Bank of England, to the account of the Accountant-General, till the suit can be finally determined. It is obvious that without actual certainty that the Court was right in the conclusion to which it came, the Court would not run the risk of doing so great an injury to those concerned. It ought not to be done if any doubt whatever remained of the propriety of the step. But that is not all—the Court is asked to do this in the absence of the only person who can represent these interests. The Court is asked to do it in the absence of the Attorney-General, who alone can represent the several interests which would be affected by the appointment of a Receiver.



But supposing these parties not to be mere naked trustees for the twelve Companies—not trustees appointed by the Companies, and therefore removable by them, and over whom, therefore, the parties had an absolute power and control, and whose proceedings they could call upon this Court to regulate—but trustees appointed by charter, trustees whose rights and interests and duties are coexistent with the establishment of this property itself. Against trustees so constituted, the case made is this,—that there has been what the plaintiffs say is a departure from their rights; that is to say, that there has been an application of rents and profits to certain local purposes—that there has been a departure from the right and proper conduct of the defendants, as trustees, by an appropriation to themselves, in the shape of allowance for attendances, and in the shape of public dinners, of certain portions of this income.

When a motion is made for a Receiver, upon the ground of misconduct of a trustee, the first inquiry is, When did this misconduct take place, and at what period did the plaintiffs become acquainted with it? It appears that these alleged grounds of misconduct have existed from the time of its first establishment; that for one century at least there is proof that this Irish Society have been in the habit of making those payments—that they have been in the habit of paying to themselves, that is among their own members, certain sums of money for attendance, and that they have been in the habit of having certain public dinners, and all this known to the plaintiffs—all this matter of perfect notoriety—long before the institution of this suit. Now it is utterly impossible that this application could be made to the Court in the expectation that the Court, under that state of circumstances, should take from the Irish Society the control over this property, by an interlocutory order; and I must suppose that some such object as that which has been suggested at the bar, has been the ground of this application.

The only circumstance at all of modern date which is stated in the pleadings, is the expenditure of a certain sum of money in an election at Coleraine. It appears, by the Answers, that

took place in the year 1830, and that what had taken place was put into the shape of a resolution, and was communicated to the different Companies by the Irish Society, and that before the bill was filed. This is a transaction not likely to recur,—a transaction known to the parties at the time they instituted these proceedings, and which does not appear from the Answer to have met with any resistance from any of the Companies to whom the communication was made. Without, therefore, entering into the question at all, whether in the situation in which the Irish Society stood as a sort of patron and protector of the interests of the inhabitants of Coleraine and Londonderry, it became them to expend this sum of money for the purpose of restoring to the freemen of Coleraine the right which others had usurped from them;—(and it turns out, from the Answer, that the effect of this expenditure was, that these freemen were restored to their rights);—without entering into that question, it cannot possibly constitute a ground upon which the jurisdiction of this Court ought to be exercised by way of interlocutory order. If the Irish Society had not stood in the situation in which they do stand,—if they had been more in the character of private trustees than they appear from these proceedings to be,—it is impossible the trustees constituted by the authority which constitutes this Society, should have been removed by an interlocutory order upon such complaint as that made by these pleadings. And, therefore, without going further into this case, there is quite sufficient, from what I have already stated, to show the ground upon which I proceed, and that this is a motion,—considered as it is, an application for an interlocutory order to remove trustees so constituted, on grounds of complaint of so ancient a date, and so well known to the parties who make the application,—which must be refused, and in my opinion refused with costs.

Mr. WHITMARSH.—All parties who appear to oppose the motion to have their costs?

LORD CHANCELLOR.—Yes, all parties who have been served.

Mr. WOOD.—I have an affidavit of the service on Mr. Schultes.

Sir CHARLES WETHERELL.—I apprehend the City of London come within the principle laid down upon this subject,

because they were required to appear in the progress of the argument, as your lordship recollects.

LORD CHANCELLOR.—I think I so disposed of the City of London, that I considered that they waived the service, and came in as if they had been served.

Mr. SETON.—I appear here for one of the Companies, who was not served, but appeared voluntarily. I presume that your lordship will allow the parties in that situation their costs also.

LORD CHANCELLOR.—I do not know what situation you are in.

Mr. SETON.—I appeared, in opposition to the motion, for one of the Companies, who are associated with the Skinners' Company; but who declined to support this application, and appeared voluntarily upon the first occasion, for the purpose of opposing the motion. Your lordship afterwards held, that all the other Companies similarly situated must be served, and accordingly they were served; but I suppose it was considered not necessary, in consequence of their having appeared to serve them; but having appeared, they have persisted in their opposition to this motion.

LORD CHANCELLOR.—You appeared before the attendance of the other Companies was declared necessary.

Mr. SETON.—I did, my Lord.

LORD CHANCELLOR.—Then I think you are not entitled to your costs. Those only who were served, or who appeared after that intimation, waiving the necessity of service, can be included. As your clients (very properly perhaps) thought proper to attend without being served, it was their own act, and they cannot be entitled to their costs.

THE END.





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